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TITLE 26

TAXATION

(CHAPTERS 1-33 IN VOLUME 26A; CHAPTERS 34-51 IN VOLUME 26B; CHAPTERS 52-57 IN VOLUME 27A)

SUBTITLE 5. STATE TAXES

SUBTITLE 6. LOCAL TAXES

SUBTITLE 5. STATE TAXES

CHAPTER 58

SEVERANCE TAXES

Subchapter 1 — General Provisions

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 12: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that state and local roads and highways are in need of substantial expansion, maintenance and repair, and that additional funding is necessary to address this need. It is also found and determined that increasing development and exploitation of natural gas resources in the Fayetteville Shale Play and in other areas of this state has significantly increased the burden and wear and tear on state and local roads and highway, further exacerbating the need for maintenance and repair. It is also found and determined that previous surpluses in state revenue have been largely spent to improve public education and educational facilities in this state, as was required by the Constitution as interpreted by the Arkansas Supreme Court in the Lake View case and additional revenues must be generated from other sources to address the needs of our roads and highways. It is further found and determined that due to recent and dramatic increases in the price of gasoline, and the fact that funds for highways are generated from a flat per-gallon tax, the increasing use of more fuel-efficient vehicles has caused a condition in which revenue for roads and highways has not kept pace with the wear and tear caused by vehicular use. It is further found and determined that immediate enactment of this bill is necessary to provide adequate time for various administrative agencies of state government to prepare the necessary reporting forms and instructions, to educate taxpayers responsible for paying the additional taxes levied herein, and take other steps necessary for the proper implementation and administration of this act. Therefore, the General Assembly hereby finds and declares that an emergency exists, pursuant to Article V, § 38 of the Arkansas Constitution, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after January 1, 2009."

Acts 2009, No. 145, § 5: Feb. 12, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that natural gas is a unique resource that cannot be reported accurately under the existing language of the Arkansas Code. This act will alleviate the reporting problems currently burdening the state and provide the state with more accurate information. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 278, § 7: Jan. 1, 2012.

26-58-101. Definitions.

As used in this subchapter:

(1) "Acquired", when used in reference to the severance tax on timber, means the time when timber is first weighed or measured by a primary processor after severance;

(2) "Completion" or "completed" means the act of making a well capable of producing gas;

(3) "Conventional gas well" means any gas well that is not classified as a high-cost gas well;

(4) "Date of first production", when used in reference to a particular gas well, means the first day in the month that the gas well produces natural gas for sale;

(5) "Director" means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(6) "High-cost gas" means natural gas that is:

(A) Produced from any gas well completed within a shale formation, including, but not limited to, the Fayetteville Shale, the Woodford Shale, the Moorefield Shale, and the Chattanooga Shale formations, or their stratigraphic equivalents, as described in published stratigraphic nomenclature recognized by the Arkansas Geological Survey;

(B) Produced from any gas well in which the production is from a completion that is located at a depth of more than twelve thousand five hundred feet (12,500 ft.) below the surface of the earth, where the term "depth" means the length of the maximum continuous drilling string of drill pipe used between the drill bit face and the drilling rig's kelly bushing;

(C) Produced from a tight gas formation;

(D) Produced from geopressured brine; or

(E) Occluded natural gas produced from coal seams;

(7) "High-cost gas well" means any gas well that is completed as a well capable of producing high-cost gas;

(8)(A) "Marginal gas", when used in reference to a conventional gas well, means all natural gas produced from the conventional gas well beginning on the date the conventional gas well is incapable of producing more than two hundred fifty (250) Mcf (one thousand cubic feet) per day, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission, during the calendar month for which the severance tax report is filed.

(B) "Marginal gas", when used in reference to a high-cost gas well, means all natural gas produced from the high-cost gas well beginning on the date the high-cost gas well is incapable of producing more than one hundred (100) Mcf (one thousand cubic feet) per day, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission, during the calendar month for which the severance tax report is filed.

(C) "Marginal gas" includes production from all zones and multilateral branches at a single well without regard to whether the production is separately metered.

(D) "Marginal gas" does not include gas produced from:

(i) A high-cost gas well during the thirty-six-month period provided in § 26-58-127(b)(1);

(ii) A high-cost gas well during any allowed extension provided in § 26-58-127(b)(2); or

(iii) A new discovery gas well during the twenty-four-month period provided in § 26-58-127(a);

(9) "Marginal gas well" means any gas well that produces or is capable of producing marginal gas, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission;

(10) "Market value", when used in reference to the rate of severance tax on natural gas, means the producer's actual cash receipts from the sale of natural gas to the first purchaser less the actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the purchaser;

(11) "Natural resources" means all natural products of the soil or water of Arkansas including, but not limited to, asphalt, barite, bauxite, chalk, chert, clay, cinnabar, coal, diamonds, fuller's earth, natural gas, granite, gravel, gypsum, iron, lead ore, lignite, limestone, manganese and manganiferous ores, marble, marl, mussel shells, novaculite, oil, ochre, pearls and other precious stones, phosphate, salt, sand, shale, slate, shells, stone and stone products, sulphur, titanium ore, and zinc ore;

(12) "New discovery gas" means natural gas that is produced from a new discovery gas well;

(13) "New discovery gas well" means any conventional gas well that is completed as a well capable of producing gas;

(14) "Payout" means the date the cumulative working interest revenues from a high-cost gas well equal the sum of:

(A) All drilling and completion costs incurred in connection with the high-cost gas well; and

(B) All operating costs incurred or accrued in connection with the operation of the high-cost gas well during the period of cost recovery;

(15) "Point of severance" means the place at which transportation of timber or natural resources, excluding natural gas, has been or is about to be commenced for use or processing after being severed;

(16) "Primary processor" means any person, firm, corporation, or other entity engaged in business as a sawmill, chipper mill, stud mill, square mill, plywood or veneer mill, whole tree chipping mill, post, pole, or piling plant, charcoal plant, processed board mill, bolt working mill, pulp mill, planing or surfacing mill, or other mill or facility where timber first undergoes any processing after harvesting;

(17) "Producer" means any person, firm, receiver, or other fiduciary, corporation, or association, who or which engages in the business of severing natural resources or timber;

(18) "Purchaser" means any person, firm, receiver, or other fiduciary, corporation, or association, consignor, agent, or other dealer, by whatever name called, who or which acquires title outright or conditionally to any interest in severed natural resources or timber;

(19)(A) "Sever", "severed", or "severing" mean natural resources cut, mined, dredged, or otherwise taken or removed for commercial purposes from the soil or water.

(B) However, "sever", "severed", or "severing" as defined in this subdivision (19) do not apply to any natural gas returned to any formation, in recycling, repressuring, pressure maintenance operation, or other operation, for the production of oil or any other liquid hydrocarbon.

(C) Further, "sever", "severed", or "severing" as defined in this subdivision (19) do not apply to any hydrocarbons in gaseous or liquid form that are burned, used, consumed, or otherwise employed in oil and gas operations, including, but not limited to, secondary recovery operations and fuel for engines in the same leasehold, drilling, or production unit or unit area of a unitized reservoir from which such hydrocarbons are produced;

(20) "Tight gas formation" means any natural gas bearing formation that:

(A) Has previously been determined by Oil and Gas Commission orders or field rules to be a low permeability formation, including:

(i) Booneville and Chismville-OR# 84-2003-07;

(ii) Gragg-OR# 89-2004-07;

(iii) Waveland-OR# 86-2007-07;

(iv) Rich Mountain-OR# 304-2006-09;

(v) Mansfield-OR# 28-2003-03; and

(vi) Witcherville and Excelsior-OR# 103-2005-07;

(B) Is determined by the Director of the Oil and Gas Commission to have an estimated in situ permeability of one-tenth milliDarcy (0.1 mD) or less; or

(C) Is determined to be a tight gas formation by field rules, general rules, or orders issued by the Director of the Oil and Gas Commission;

(21) "Timber" means either softwood or hardwood species of trees suitable for use as sawlogs, pulpwood, veneer bolts or billets, stave bolts or billets, and splits, handle and other bolts or billets including chemical wood, cross ties, posts, poles, piling, chips, charcoal, or any now known or hereafter discovered use of wood or wood pulp;

(22) "Time of severance" means the date on which transportation of timber or natural resources, excluding natural gas, has been or is about to be commenced for their use or processing after being severed; and

(23) "Transporter" means any person, firm, receiver, or other fiduciary, corporation, or association, who or which transports severed natural resources or timber to any point within, across, or out of the State of Arkansas.

History. Acts 1947, No. 136, § 1; 1949, No. 16, § 1; 1973, No. 493, § 1; 1983, No. 254, § 1; A.S.A. 1947, § 84-2101; Acts 2008 (1st Ex. Sess.), No. 4, § 6; 2008 (1st Ex. Sess.), No. 5, § 6.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Amendments. The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, inserted present (2) through (4), (6) through (10), (12) through (14), and (20) and redesignated the remaining subdivisions accordingly; in (15) and (22), inserted "timber or" and substituted "excluding natural gas" for "or timber"; substituted "(19)" for "(8)" in (19)(B) and (C); and, in (23), inserted "severed" and substituted "to any" for "from the point of severance, or other."

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 6: Jan. 1, 2009, by their own terms.

26-58-109. Tax additional to property tax.

CASE NOTES

Severance and Property Taxes Not Illegal.

The co-existence of ad valorem property taxes on minerals, oil, and natural gas interests and the subsequently enacted severance tax on minerals was explicitly authorized by this section, and was not an illegal duplicative tax. May v. Akers-Lang, 2012 Ark. 7, 386 S.W.3d 378 (2012).

26-58-111. Rate of tax.

The severance tax is to be predicated upon the quantity severed and at the following rates:

(1) On barite, bauxite, titanium ore, manganese and manganiferous ores, zinc ore, and cinnabar, fifteen cents (15¢) per ton of two thousand pounds (2,000 lbs.);

(2) On coal, lignite, and iron ore, two cents (2¢) per ton of two thousand pounds (2,000 lbs.);

(3) On gypsum not used for manufacturing within Arkansas into ultimate consumer's goods, or sold for manufacturing within Arkansas into ultimate consumer's goods, and chemical grade limestone, silica sand, and dimension stone, one and one-half cents (1½¢) per ton of two thousand pounds (2,000 lbs.);

(4) On crushed stone including, but not limited to, chert, granite, slate, novaculite, and limestone, and on construction sand, gravel, clay,

chalk, shale, and marl, one cent (1¢) per ton of two thousand pounds (2,000 lbs.);

(5) On natural gas, the following percent of the market value of the natural gas severed within the State of Arkansas:

(A) On new discovery gas, as defined in § 26-58-101(12), the severance tax rate shall be one and one-half percent (1.5%) for the time period provided in § 26-58-127(a);

(B) On high-cost gas, as defined in § 26-58-101(6), the severance tax rate shall be one and one-half percent (1.5%) for the time periods provided in § 26-58-127(b);

(C) On marginal gas, as defined in § 26-58-101(8), the severance tax rate shall be one and one-quarter percent (1.25%); and

(D) On all natural gas that is not defined as new discovery gas, high-cost gas, or marginal gas, the severance tax rate shall be five percent (5%);

(6)(A) On oil, five percent (5%) of the market value at time and point of severance.

(B) However, whenever the production of oil from a well which is measured separately or from a group of wells which is measured separately, including any well or wells that are utilized for the injection of salt water or other effluents for pressure maintenance or secondary recovery purposes, averages ten (10) barrels or less per well per day during any calendar month, the privilege or license tax on oil produced from that well or group of wells during that month shall be computed at the rate of four percent (4%) of the market value at time and point of severance.

(C) The Director of the Department of Finance and Administration shall have the power to promulgate such reasonable rules and regulations as shall be necessary to effectively enforce the foregoing provisions;

(7) On timber, the tax shall be collected, reported, and remitted by each primary processor and shall be computed on the weight of such timber as determined at the last time the timber is weighed prior to undergoing the first processing after severance thereof and shall be at the following rates:

(A) On all pine timber, seventeen and eight-tenths cents (17.8¢) per ton of two thousand pounds (2,000 lbs.);

(B) On all other timber, twelve and five-tenths cents (12.5¢) per ton of two thousand pounds (2,000 lbs.); and

(C)(i) If any primary processor of timber is unable to weigh the timber as required herein because an approved weight scale is not available, the primary processor shall use the following conversion factors to convert other measurements of timber to weight:

PRODUCT	CONVERSION FACTORS
SAWTIMBER:	
Pine	16,000 Lbs./MBF Doyle
All Other	16,000 Lbs./MBF Doyle
PULPWOOD:	
Pine	5,000 Lbs./Cord-128 Cu. Ft.
All Other	6,000 Lbs./Cord-128 Cu. Ft.
POSTS OR POLES:	
Less than 10' in length	30 Posts/Ton
POSTS OR POLES:	
10'—16' in length	15 Posts/Ton
POLES OR PILING:	
Greater than 16' in length	40 Lineal Ft./Ton
SPLIT CORDS	6,000 Lbs./Cord-128 Cu. Ft.
VENEER CORDS	5,000 Lbs./Cord-128 Cu. Ft.
HANDLE AND OTHER CORDS	6,000 Lbs./Cord-128 Cu. Ft.
CHEMICAL CORDS	6,000 Lbs./Cord-128 Cu. Ft.
WHOLE TREE CHIPS:	
Pine	5,000 Lbs./Cord-128 Cu. Ft.
All Other	6,000 Lbs./Cord-128 Cu. Ft.

(ii) If the above conversion factors are not appropriate for conversion of any particular measurement of timber to weight, the director, with the advice and approval of the Arkansas Forestry Commission, shall develop an appropriate conversion procedure to produce equivalent rates;

(8) On diamonds, fuller's earth, ochre, natural asphalt, native sulphur, salt, pearls and other precious stones, whetstone, novaculite, and on all other natural resources, except gypsum, not otherwise specifically identified under the severance tax laws of this state, except mussel shells, five percent (5%) of the fair market value at the time of severance;

(9) On salt water whose naturally dissolved components, or solutes, are used as source raw materials for bromine and other products derived from the same salt water used in the bromine production, two dollars and forty-five cents ($2.45) per one thousand (1,000) barrels, forty-two thousand United States gallons (42,000 U.S. gals.); and

(10)(A) Except as provided in subdivision (10)(B) of this section, on all other natural resources not otherwise specifically identified under the severance tax laws of this state, five percent (5%) of the market value at time and point of severance.

(B)(i) Biomass used primarily for the purpose of biofuel production is not subject to a severance tax.

(ii) As used in subdivision (10)(B)(i) of this section, "biomass" means any woody biomass that is grown for use in biofuels and is not grown for the production of other timber products.

History. Acts 1947, No. 136, § 2; 1949, No. 469, § 1; 1953, No. 42, § 9; 1953, No. 322, § 1; 1957, No. 21, § 1; 1957, No. 150, § 1; 1957, No. 263, § 1; 1959, No. 93, § 1; 1959, No. 129, §§ 1, 2; 1967, No. 379, § 1; 1971, No. 147, § 1; 1977, No. 388, §§ 3, 4; 1981, No. 617, § 1; 1983, No. 254, § 2; 1983, No. 874, § 1; A.S.A. 1947, § 84-2102; Acts 1993, No. 25, § 1; 1993, No. 1156, § 3; 1995, No. 356, § 1; 2008 (1st Ex. Sess.), No. 4, § 7; 2008 (1st Ex. Sess.), No. 5, § 7; 2009, No. 655, §§ 99, 100; 2009, No. 737, § 1.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Amendments. The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, rewrote (5).

The 2009 amendment by No. 655 substituted "(12.5¢)" for "(12½¢)" in (7)(B); and inserted "and" at the end of (7)(B) and (9).

The 2009 amendment by No. 737 added (10)(B), redesignated the remaining text of (10) accordingly, inserted "Except as provided in subdivision (10)(B) of this section" in (10)(A), and made related changes.

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 7: Jan. 1, 2009, by their own terms.

26-58-114. Reports and payment of tax by producers, primary processors — Cancellation of permit upon cessation of business — Penalty for noncompliance.

(a)(1) Each producer of natural resources, excluding natural gas, and each primary processor of timber, whether or not he or she shall have actually severed natural resources, excluding natural gas, or processed timber during the preceding month, shall file a report within twenty-five (25) days after the end of each month with the Director of the Department of Finance and Administration in a form prescribed by the director that states:

(A) The kind of natural resources or timber, if any, severed by such producer or processed or acquired for processing by the primary processor during the next preceding month;

(B) The point of severance;

(C) The gross quantity severed and the cash value;

(D) The amount of severance tax due; and

(E) Any other information as the director may reasonably require for the enforcement of this subchapter.

(2)(A) When the average amount of severance tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars ($100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made.

(B) Each quarterly report and remittance shall be due on or before the twenty-fifth day of the month following the last month of the quarter for which the report is made, respectively January 25, April 25, July 25, and October 25 of each year.

(3) When the average amount of severance tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars ($25.00) per month, the director may notify the taxpayer that an annual report and remittance in lieu of a monthly report may be made on or before January 25 of each year for the preceding calendar year.

(b)(1)(A) A producer of natural gas shall file with the director a report, in a form or forms prescribed by the director, that states:

(i) The natural gas, if any, severed by the producer for each calendar month;

(ii) The point of severance;

(iii) The gross quantity severed and the market value;

(iv) The amount of severance tax due; and

(v) Any other information as the director may reasonably require for the enforcement of this subchapter.

(B) The producer shall file the monthly report required under subdivision (b)(1)(A) of this section on or before the twenty-fifth day of the second month following the month that is covered by the report.

(C) The producer is required to file a report with the director for each month whether or not the producer has actually severed natural gas during the month.

(2)(A) When the average amount of severance tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars ($100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made.

(B) Each quarterly report and remittance shall be due on or before the twenty-fifth day of the second month following the last month of the quarter for which the report is made, respectively February 25, May 25, August 25, and November 25 of each year.

(3) When the average amount of severance tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars ($25.00) per month, the director may notify the taxpayer that an annual report and remittance in lieu of a monthly report may be made on or before February 25 of each year for the preceding calendar year.

(c) The report shall be verified by the producer or primary processor himself or herself in the instance of an individual producer or primary

processor and by a member or officer or the manager of the producer or primary processor in all other instances.

(d) The payment of the full amount of the severance tax due from the report shall accompany the report.

(e)(1) Within ten (10) days after any producer or primary processor ceases operation with the intention of no longer engaging in the business of severing or processing natural resources or timber, the permit issued shall be returned by him or her to the director for cancellation.

(2) A producer or processor whose permit is cancelled under subdivision (e)(1) of this section may reengage in the business of severing or processing natural resources or timber after filing a new application with the director and receiving a new permit by the director.

(f)(1) Upon conviction, a producer or primary processor who fails to comply with this section is guilty of a violation and shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(2) Upon conviction, a person knowingly making a false material statement in a report required by this section is guilty of perjury under § 5-53-102.

History. Acts 1947, No. 136, § 4; 1947, No. 336, § 1; 1983, No. 254, § 4; A.S.A. 1947, § 84-2104; Acts 2009, No. 145, § 1; 2009, No. 655, § 101; 2011, No. 278, § 1.

Amendments. The 2009 amendment by No. 145, in (a), inserted "excluding natural gas" in two places and inserted "processed" preceding "timber"; inserted (b) and (e)(2) and redesignated the remaining subsections accordingly; and made related and stylistic changes.

The 2009 amendment by No. 655 rewrote present (f).

The 2011 amendment redesignated (a) through (a)(5) as (a)(1)(A) through (a)(1)(E); added (a)(2) and (a)(3); redesignated (b)(1) through (b)(3) as (b)(1)(A) through (b)(1)(C); and added (b)(2) and (b)(3).

26-58-115. Reports and payment due from producer actually severing or from primary processor — Methods of accumulating tax payment — Penalty for noncompliance.

(a) Except as otherwise provided in this subchapter, the report required by § 26-58-114 shall be filed and the payment of the severance tax shall be made by the producer actually severing the natural resources whether as owner, lessee, concessionaire, or contractor and, in the case of severance taxes on timber, the report required by § 26-58-114 shall be filed and the severance tax shall be paid by the primary processor.

(b) The reporting taxpayer shall collect or withhold out of the proceeds of the sale of the natural resources severed the proportionate parts of the total severance tax due by the respective owners of the natural resources at the time of severance.

(c) Every producer actually operating any oil or gas well, quarry, or other property from which natural resources are severed but under

contract or other obligation in which direct payment to the owner of any royalty, excess royalty, or working interest, either in money or in kind is required, is authorized, empowered, and required to deduct the amount of the severance tax in respect thereto from any such royalty or other interest before making the direct payment.

(d) Notwithstanding the sale or delivery, all severed oil or gas sold or delivered to any pipeline company for transportation by it through pipes connected with the oil or gas well of the owner is subject to the severance tax on the severed oil or gas.

(e) A primary processor of timber shall be responsible for the payment of severance taxes on all timber processed or acquired for processing by him or her whether or not the primary processor collects or withholds the tax from the producer.

(f) Any producer or primary processor failing or refusing to comply with any provision of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

History. Acts 1947, No. 136, § 5; 1983, No. 254, § 5; A.S.A. 1947, § 84-2105; Acts 2005, No. 1994, § 179; 2007, No. 827, §§ 232, 233; 2011, No. 278, § 2.

Amendments. The 2011 amendment deleted "monthly" preceding "report required" twice in (a).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

26-58-116. Purchasers' reports and payment of tax — Penalties for noncompliance.

(a) Unless a purchaser of natural resources, excluding natural gas, is excused in writing by the Director of the Department of Finance and Administration in advance of the report filing deadline from filing a report, a purchaser of natural resources, excluding natural gas, shall file with the director a verified report within twenty (20) days after the end of each reporting period in a form or forms prescribed by the director that states:

(1) The names and addresses of all producers from whom the purchaser has acquired natural resources during the respective reporting period;

(2) The types and total quantity of each type of the natural resources acquired and the purchase price; and

(3) Any other information as the director reasonably may require for the proper enforcement of this subchapter.

(b)(1) Unless a purchaser of natural gas is excused in writing by the director in advance of the report filing deadline from filing a report, a purchaser of natural gas shall file with the director a report in a form or forms prescribed by the director that states:

(A) The names, addresses, and severance tax permit numbers of all producers from whom the purchaser has purchased natural gas during each reporting period;

(B) The total quantity of natural gas acquired and the purchase price; and

(C) Any other information as the director may reasonably require for the proper enforcement of this subchapter.

(2) The purchaser of natural gas shall file each report required under this subsection (b) on or before the twenty-fifth day of the second month following the reporting period that is covered by the report.

(c)(1) It is the duty of each purchaser of natural resources, excluding natural gas, to ascertain in advance of permitting the natural resources so purchased to be processed or otherwise changed from the natural state thereof at the time of severance or to be transported for the purpose of such processing or other change that the severance tax upon the natural resources has been paid.

(2) Each purchaser of natural gas shall determine in advance of filing the report under subsection (b) of this section that each producer from whom the purchaser has purchased natural gas has been issued a severance tax permit number and furnish the director the severance tax permit number of each producer under subsection (b) of this section.

(3)(A) The purchaser of natural resources, excluding natural gas, is primarily liable for any unpaid severance tax in the event of failure to make such advance ascertainment.

(B) Each purchaser of natural gas is primarily liable for any unpaid severance tax that is attributable to a producer from whom the purchaser purchased natural gas if the purchaser fails to furnish the director with all of the information required in subsection (b) of this section.

(4) However, the purchaser as a condition to permitting the processing or other change of such natural resources, excluding natural gas, as to which the severance tax shall not have been paid by the producer may himself or herself pay such tax either in advance or, with the advance written approval of the director for cause shown to the director, within twenty (20) days after commencing the processing or other change of the natural resources or the transportation thereof for such purpose.

(d)(1) Unless the director has given advance written approval for the removal under subsection (a) of this section, the removal by the purchaser of natural resources, excluding natural gas, to any point of concentration or assembly, either inside or outside the state, without the severance tax having been previously paid by the producer or the purchaser is a fraudulent concealment of the location of the natural resources with the intent to avoid the payment of the severance tax.

(2) Unless the director has given advance written approval for the removal, the removal by the producer, purchaser, or primary processor of any timber to any point outside the state without the severance tax having been paid on the timber is unlawful.

(e)(1) Upon conviction, each removal described in subdivision (d)(1) of this section by the purchaser of natural resources, excluding natural gas, is a violation punishable by a fine of at least fifty dollars ($50.00) and not more than five hundred dollars ($500).

(2) Upon conviction, each removal described in subdivision (d)(2) of this section by a producer, purchaser, or primary processor is a violation punishable by a fine of at least fifty dollars ($50.00) and not more than five hundred dollars ($500).

(3) Upon conviction, each failure by a producer, purchaser, including a purchaser of natural gas, or primary processor to file a report required by this section is a violation punishable by a fine of at least fifty dollars ($50.00) and not more than five hundred dollars ($500).

(4) Upon conviction, a person knowingly making a false material statement in a report required by this section is guilty of perjury under § 5-53-102.

History. Acts 1947, No. 136, § 7; 1955, No. 100, § 1; 1983, No. 254, § 6; A.S.A. 1947, § 84-2107; Acts 2009, No. 145, § 2; 2009, No. 655, § 102; 2011, No. 278, §§ 3, 4.

Amendments. The 2009 amendment by No. 145 rewrote and redesignated (a); inserted (b), (c)(2), and (c)(3)(B) and redesignated the remaining subsections accordingly; inserted "excluding natural gas" in (c)(1), (c)(3)(A), (c)(4), (d)(1) and (d)(2); inserted "including a purchaser of natural gas" in (d)(2); and made related and stylistic changes.

The 2009 amendment by No. 655 rewrote present (d) and (e).

The 2011 amendment substituted "reporting period" for "month" in the introductory paragraph of (a)(1), (a)(1)(A), and in (b)(2); substituted "reporting period" for "calendar month" in (b)(1)(A); and deleted "monthly" preceding "report required" in (e)(3) and (e)(4).

26-58-117. Responsibility for filing reports.

(a)(1) Notwithstanding the provisions of §§ 26-58-114 and 26-58-116, either the producer or severer of natural resources, excluding natural gas, or the purchaser of natural resources, excluding natural gas, shall report and pay severance taxes thereon as required in §§ 26-58-114 and 26-58-116.

(2) However, if either the producer or severer of natural resources, excluding natural gas, or the purchaser of natural resources, excluding natural gas, files the report as required in §§ 26-58-114 and 26-58-116 and pays the severance taxes during any reporting period, the other shall be relieved of the responsibility of filing such report.

(b) Both the producer of natural gas and the purchaser of natural gas shall be required to file their reports under §§ 26-58-114 and 26-58-116.

History. Acts 1977, No. 456, § 1; A.S.A. 1947, § 84-2104.1; Acts 2009, No. 145, § 3; 2011, No. 278, § 5.

Amendments. The 2009 amendment, in (a), redesignated the text, inserted "excluding natural gas" in four places, and inserted "as required in §§ 26-58-114 and 26-58-116" in (a)(2); added (b); and made related and stylistic changes.

The 2011 amendment substituted "reporting period" for "month" in (a)(2); and deleted "monthly" preceding "reports under" in (b).

26-58-119. Procedure upon failure to file reports or pay tax, filing inaccurate reports — Penalties — Subpoenas.

(a)(1) In the event any producer or purchaser of natural resources or any primary processor of timber fails within the time provided for in this subchapter to file the verified reports required of them respectively, or in the event that the Director of the Department of Finance and Administration is not satisfied of the correctness of the reports as filed with the director, or in the event any such producer or purchaser of natural resources or any primary processor of timber fails to pay all taxes due as provided in §§ 26-58-114 and 26-58-116, it shall be the duty of the director to ascertain the true amount and value of the natural resources or timber severed and to assess the severance tax based thereon.

(2) For the purposes thereof the director is authorized to require either the producer or purchaser or both of them, or the primary processor, to furnish the director with such information, or further information, as the director may deem necessary and to require the production, at such place as the director may designate, of the books, records, and files of the producer and the purchaser or primary processor and to examine them and to take testimony of witnesses.

(3)(A) The director shall assess a penalty equal to fifty percent (50%) of the amount of the severance tax, including the cost and expense of assessing the penalty, and shall make demand for payment of the penalty upon both the producer of natural resources and the purchaser of natural resources to the extent liability for the tax may be imposed on the purchaser under § 26-58-116 or the primary processor of timber, as the case may be.

(B) The penalty assessment under subdivision (a)(3)(A) of this section shall not apply to any estimated severance tax payment that is made in good faith by a producer of natural gas or a purchaser of natural gas.

(b)(1) If the producer, purchaser, or primary processor or any other such witness willfully fails to appear or to produce such books, records, and files before the director, in obedience to the director's request, the director shall certify the name of the reluctant producer, purchaser, primary processor, or other witness, with a statement of the circumstances to the circuit court of the county having jurisdiction over the person.

(2) The court shall thereupon issue a subpoena commanding the producer, purchaser, primary processor, or other witness to appear before the director, at a place designated, on a day fixed, to be continued as occasion may require, and to give such evidence, and to produce for inspection such books and papers as may be required by the director for a proper determination of the amount of taxes due.

(3) The court may hear and punish any contempt of such subpoena brought to the court's attention by the director.

History. Acts 1947, No. 136, § 8; 1983, No. 254, § 7; A.S.A. 1947, § 84-2108; Acts 2009, No. 145, § 4; 2011, No. 278, § 6.

Amendments. The 2009 amendment, in (a)(3), inserted (a)(3)(B), and rewrote and redesignated the remaining text.

The 2011 amendment deleted "monthly" following "verified" in (a)(1).

26-58-124. Distribution of severance tax generally.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Acts 2011, No. 211, § 5 provided: "MAXIMUM FUNDING ALLOCATION. In no event shall the funding for appropriations made in any fiscal year for the Arkansas Highway and Transportation Department for road and bridge repair, maintenance, and grants exceed the maximum amount of general revenue allocated and distributed under Arkansas Code Annotated 26-19 58-124 (c)(1) from the previous fiscal year, less six hundred seventy five thousand dollars ($675,000)."

Acts 2012, No. 80, § 5 provided: "MAXIMUM FUNDING ALLOCATION. In no event shall the funding for appropriations made in any fiscal year for the Arkansas Highway and Transportation Department for road and bridge repair, maintenance, and grants exceed the maximum amount of general revenue allocated and distributed under Arkansas Code Annotated 26-58-124 (c)(1) from the previous fiscal year, less six hundred seventy five thousand dollars ($675,000)."

Acts 2013, No. 113, § 5, provided: "MAXIMUM FUNDING ALLOCATION. In no event shall the funding for appropriations made in any fiscal year for the Arkansas Highway and Transportation Department for road and bridge repair, maintenance, and grants exceed the maximum amount of general revenue allocated and distributed under Arkansas Code Annotated 26-58-124 (c)(1) from the previous fiscal year, less six hundred seventy five thousand dollars ($675,000)."

Acts 2013, No. 927, § 13, provided: "TURNBACK REPORTING. Each calendar year, beginning with calendar year 2013, each county and municipality receiving total highway revenues and highway severance turnback per A.C.A 27-70-207 and A.C.A 26-58-124 of $2,000,000 or more shall report to the House Public Transportation Committee and the Senate Transportation, Technology and Legislative Affairs Committee indicating how highway revenues and highway severance turnback funds were utilized. The report shall include a general ledger accounting of the city or county street/road fund. The report shall also include the percentage of the street/road fund that is comprised of state funds. Further, the report shall include details of each contracted project including type and description of project, location of project and total amount of money spent on the project. The report shall be submitted annually no later than January 30th for the previous year's projects."

Amendments. The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, inserted "except for the taxes, penalties, and costs collected on natural gas" in (a); and added (c).

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, §§ 8, 9: Jan. 1, 2009, by their own terms.

26-58-127. Cost recovery periods for new discovery gas and high-cost gas.

(a)(1) The one-and-one-half-percent severance tax rate on new discovery gas shall apply to the first twenty-four (24) consecutive calendar months beginning on the date of first production from the new discovery gas well, regardless of whether production commenced prior to January 1, 2009; provided, however, that all production attributable to the period prior to January 1, 2009, shall be taxed at the rate in effect prior to January 1, 2009.

(2) At the end of the twenty-four-month period, the severance tax rate under § 26-58-111(5)(C) or § 26-58-111(5)(D), as applicable, shall apply.

(b)(1) The one-and-one-half-percent severance tax rate on high-cost gas shall apply to the first thirty-six (36) consecutive calendar months beginning on the date of first production from the high-cost gas well, regardless of whether production commenced prior to January 1, 2009; provided, however, that all production attributable to the period prior to January 1, 2009, shall be taxed at the rate in effect prior to January 1, 2009.

(2) If a high-cost gas well has not achieved payout by the end of the thirty-six-month period, the one-and-one-half-percent severance tax rate shall be extended until the earlier to occur of:

(A) Payout of the high-cost gas well; or

(B) Twelve (12) months following the expiration of the original thirty-six-month period.

(3) The severance tax rate under § 26-58-111(5)(C) or § 26-58-111(5)(D), as applicable, shall apply to high-cost gas at the later of the expiration of the thirty-six-month period or any allowed extension.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Effective Dates. Acts 2008 (1st Ex.

Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

26-58-128. Determination of new discovery gas, high-cost gas, or marginal gas.

(a) The producer of a proposed or existing gas well may apply at any time to the Director of the Oil and Gas Commission for a determination that the well qualifies as a new discovery gas well, a high-cost gas well, or a marginal gas well.

(b) The director may require an applicant to provide any information required to administer this section.

(c) The director shall make the determination within fifteen (15) calendar days of the application by the producer, and the producer shall attach the determination to its severance tax form next due.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

26-58-129. Natural gas severance tax payment, apportionment of severance tax between royalty owner and producer, and authority for rulemaking.

(a) The severance tax on natural gas shall be paid in the manner provided in this chapter.

(b) The portion of the severance tax that is required to be deducted from the royalty owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(c) The Department of Finance and Administration may promulgate the rules necessary to enforce the provisions of this act.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Meaning of "this act". Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, codified as §§ 19-6-201, 19-6-301, 26-58-101, 26-58-111, 26-58-124, 26-58-127 — 26-58-129 and 27-70-202.

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

Subchapter 2 — Tax Credits for Certain Oil and Gas Producers

Effective Dates. Acts 2011, No. 791, § 11: Jan. 1, 2012.

26-58-201. Definitions.

As used in this subchapter:

(1)(A) "Approved underground saltwater disposal system" means a system or systems of reinjection of salt water produced as a result of oil or natural gas production into an underground level or stratum, as approved by the Arkansas Pollution Control and Ecology Commission or the Oil and Gas Commission, in which the salt water disposed of and the method of disposing of the salt water does not pose a menace to a fresh water supply or to the lakes and streams of this state.

(B) "Approved underground saltwater disposal system" does not include any:

(i) Reinjection system which is designed primarily for the purpose of secondary recovery and pressure maintenance; or

(ii) Pool that has been unitized for secondary recovery or pressure maintenance by order of the Oil and Gas Commission;

(2) "Director" means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(3) "Person" means any individual, firm, association, partnership, limited liability company, or corporation;

(4) "Producer" means the producer of oil or natural gas who is charged with the responsibility of reporting and paying the severance tax on the oil or natural gas as required by the laws of this state; and

(5) "Severance tax" means the severance tax on oil or natural gas produced in this state as levied by § 26-58-107.

History. Acts 1959, No. 57, § 1; A.S.A. 1947, § 84-2113; Acts 1995, No. 1160, § 39; 2011, No. 791, § 2.

Amendments. The 2011 amendment substituted "Approved underground saltwater disposal system" for "Approved underground salt water disposal system" in (1)(A) and in the introductory language of (1)(B); substituted "disposing of the salt water does not pose a menace" for "disposing of the same shall pose no menace" in (1)(A); inserted "or natural gas" in (1)(A) and (5); deleted former (3) and redesignated former (4) as present (3); and inserted present (4).

26-58-202. Applicability.

(a) The benefits of the provisions of this subchapter shall not apply to the severance tax due or payable on oil or natural gas produced from nonsaltwater-producing wells in this state.

(b) The benefits of the provisions of this subchapter shall not apply to any underground salt water disposal system that may have been established prior to June 11, 1959, it being the intent of this subchapter that the provisions hereof shall apply only to approved underground salt water disposal systems established from and after June 11, 1959.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114; Acts 2011, No. 791, § 3.

Amendments. The 2011 amendment, in (a), inserted "or natural gas" and substituted "nonsalt-water-producing" for "nonsalt water producing."

26-58-204. Severance tax credit for oil producer.

An oil producer in this state who provides for the disposition of salt water produced in the production of oil from oil wells of the oil producer in this state by means of an approved underground saltwater disposal system shall be allowed a severance tax credit on all oil produced by the saltwater-producing oil wells in the amount and in the method provided in this subchapter.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114; Acts 2011, No. 791, § 4.

Amendments. The 2011 amendment substituted "Severance tax credit for oil producer" for "Credit on severance tax of oil producer" in the section head; substituted "underground saltwater disposal system" for "underground salt water disposal system," "severance tax credit" for "credit on severance taxes due and payable to the State of Arkansas," and "saltwater-producing oil wells" for "salt water producing oil wells."

26-58-205. Severance tax credit for natural gas producer.

A natural gas producer charged with the responsibility of reporting and paying the severance tax on natural gas who provides for the disposal of saltwater produced in the production of natural gas by means of an approved underground saltwater disposal system is allowed a severance tax credit on all natural gas produced by the saltwater-producing natural gas wells in the amount and in the method provided in this subchapter.

History. Acts 1961, No. 138, § 1; A.S.A. 1947, § 84-2121; Acts 2011, No. 791, § 5.

Amendments. The 2011 amendment rewrote the section.

26-58-206. Permit for credit.

(a) A producer in this state wishing to obtain the benefits of the provisions for this subchapter shall make application to the Director of the Department of Finance and Administration for a permit to obtain credit on severance taxes due on all oil or natural gas produced in salt-water-producing wells of the producer as provided in this subchapter.

(b) The application shall list:

(1) The name and address of the producer;

(2) The number and location of all salt-water-producing wells of the producer; and

(3) A certified copy of a certificate from the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission certifying that all salt water produced in the production of oil or natural gas in the wells is being disposed of in an approved underground saltwater disposal system.

(c) If the director determines that the producer has complied with the provisions of this subchapter and the rules established by the director, the director shall issue a permit to the producer.

(d) The permit shall entitle the producer to obtain a severance tax credit on all oil or natural gas produced in salt-water-producing wells in the amount provided in this subchapter.

History. Acts 1959, No. 57, § 3; A.S.A. 1947, § 84-2115; Acts 2011, No. 791, § 6.

Amendments. The 2011 amendment inserted "or natural gas" in (a), (b)(3), and (d); substituted "salt-water-producing" for "salt water producing" in (a), (b)(2), and (d); and substituted "underground saltwater disposal system" for "underground salt water disposal system" in (b)(3).

26-58-207. [Repealed.]

Publisher's Notes. This section, concerning reports of tax due on oil produced, was repealed by Acts 2011, No. 791, § 7. The section was derived from Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-208. Amounts of credits or tax — Maximum annual credits allowed.

(a) A producer is entitled to an annual severance tax credit that is calculated based upon the cost, as defined in § 26-58-209, of the producer in maintaining an approved underground saltwater disposal system during the calendar year for which the severance tax credit is approved.

(b)(1) The total severance tax credits allowed all oil producers for any calendar year shall not exceed three hundred seventy thousand dollars ($370,000).

(2) If for any calendar year the total severance tax credits of all oil producers operating, utilizing, or maintaining approved underground saltwater disposal systems exceed the total maximum allowable severance tax credits provided in subdivision (b)(1) of this section, the Director of the Department of Finance and Administration shall prorate the allowable severance tax credits among the respective oil producers in the proportion that the severance tax credits due each oil producer bear to the total of all severance tax credits due all qualifying oil producers.

(c)(1) The total severance tax credits allowed all natural gas producers for any calendar year shall not exceed three hundred seventy thousand dollars ($370,000).

(2) If for any calendar year the total severance tax credits of all natural gas producers operating, utilizing, or maintaining approved underground saltwater disposal systems exceed the total maximum allowable severance tax credits provided in subdivision (c)(1) of this section, the director shall prorate the allowable severance tax credits among the respective natural gas producers in the proportion that the severance tax credits due each natural gas producer bear to the total of all severance tax credits due all qualifying natural gas producers.

(d)(1) A claim for a severance tax credit shall be filed with the director on forms prescribed by the director on or before April 1 of the calendar year following the calendar year in which the costs of maintaining the underground saltwater disposal system were incurred.

(2) A severance tax credit is not allowed for any claim filed after April 1 of the calendar year following the calendar year in which the costs were incurred.

(e) The amount of the severance tax credit shall be paid to each qualifying and approved producer no later than June 1 of the calendar year following the calendar year in which the costs were incurred.

(f) Interest shall not accrue or be paid on a severance tax credit allowed under this subchapter.

(g) The director may promulgate rules to administer this section.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117; Acts 2011, No. 791, § 8.

Amendments. The 2011 amendment rewrote the section.

26-58-209. Cost of maintaining saltwater disposal system.

The cost of a producer in maintaining an approved underground saltwater disposal system for the purposes of this subchapter shall include the following:

(1) An allowance, to be spread equally over each severance tax reporting period, for depreciation of the actual cash investment of the producer in the constructing, equipping, and improving of an approved underground saltwater disposal system, which depreciation period shall not be less than five (5) years nor more than ten (10) years as may be approved by the Director of the Department of Finance and Administration;

(2) The actual cash outlay of the producer in purchasing stock in a business or corporation organized exclusively for the purpose of constructing and operating an approved underground saltwater disposal system; and

(3)(A) The actual expenses of the producer in operating and maintaining an approved underground saltwater disposal system.

(B) These expenses shall include the cost of labor, supplies, materials, utilities, and other necessary operating expenses.

(C) For a producer who purchases the services of an approved underground saltwater disposal business or corporation for disposing of saltwater produced in the production of oil or natural gas by the producer, the actual cost of the service is deemed to be the cost of the producer within the meaning of this section.

History. Acts 1959, No. 57, § 6; A.S.A. 1947, § 84-2118; Acts 2009, No. 655, § 103; 2011, No. 791, § 9.

Amendments. The 2009 amendment inserted "and" at the end of (2).

The 2011 amendment substituted "producer" for "oil producer" and "saltwater" for "salt water" throughout the section; and inserted "or natural gas" in (3)(C).

26-58-210. Records.

A producer obtaining the benefits of the provisions of this subchapter shall maintain for a period of not less than three (3) years such records as may be required by the Director of the Department of Finance and Administration that may be necessary to justify the cost credits allowed by this subchapter.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117; Acts 2011, No. 791, § 10.

Amendments. The 2011 amendment substituted "A producer" for "The oil producer."

Subchapter 3 — Additional Oil and Brine Taxes

26-58-301. Levy for benefit of Arkansas Museum of Natural Resources Fund.

(a)(1) In addition to the severance tax on oil produced in the State of Arkansas and levied in § 26-58-111(6), there is levied an additional tax of five (5) mills per barrel of oil produced in this state.

(2) All taxes, interest, and penalties collected by the Revenue Division of the Department of Finance and Administration under this subsection shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting from these special revenues the three percent (3%) provided by law for credit to the Constitutional Officers Fund and the State Central Services Fund shall credit the net amount to the Arkansas Museum of Natural Resources Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

(b)(1) There is levied upon all brine produced in the state for the purpose of bromine extraction a tax of twenty cents (20¢) per one thousand (1,000) barrels.

(2) The taxes levied in this subsection shall be reported and remitted monthly to the Director of the Department of Finance and Administration on such forms and in such manner as the director shall prescribe by regulations.

(3) All revenues collected by the director under the tax levied in this subsection shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting from these special revenues the three percent (3%) provided by law for credit to the Constitutional Officers Fund and the State Central Services Fund shall credit the net amount to the Arkansas Museum of Natural Resources Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

History. Acts 1977, No. 310, § 4; 1979, No. 759, § 5; 1979, No. 832, § 13; A.S.A. 1947, §§ 84-2102.1, 84-2102.2; Acts 2011, No. 983, § 22.

Amendments. The 2011 amendment substituted "Arkansas Museum of Natural Resources" for "Oil Museum" in the section head, in (a)(2) and (b)(3); substituted "§ 26-58-111(6)" for "§ 26-58-111(5) and (6)" in (a)(1); and substituted "subsection" for "section" in (b)(3).

26-58-302. Additional levy for benefit of Arkansas Museum of Natural Resources Fund.

(a)(1) There is levied a tax of two cents (2¢) per barrel of oil produced in this state.

(2) The taxes shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b)(1) There is levied a tax of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The tax shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director may prescribe.

(c)(1) Funds collected by the director under this section are classified as cash fund receipts, and the full amount of the funds shall be deposited into one (1) or more accounts in one (1) or more banks in this state, which account or accounts shall be designated "Arkansas Museum of Natural Resources Fund".

(2) All funds in such accounts shall be used exclusively for the maintenance, operation, and construction of the Arkansas Museum of Natural Resources.

(d) The taxes levied by this section shall be in addition to any and all other fees and taxes levied on oil and brine produced in this state.

History. Acts 1981 (1st Ex. Sess.), No. 22, §§ 1-4; A.S.A. 1947, §§ 84-2102.7 — 84-2102.10; Acts 2009, No. 655, § 104.

Amendments. The 2009 amendment substituted "Arkansas Museum of Natural Resources Fund" for "Oil and Brine Museum Funds" in (c)(1), and made minor stylistic changes.

26-58-303. Levy for benefit of Arkansas Museum of Natural Resources Bond Redemption Fund.

(a)(1) There is levied a fee of twenty (20) mills on each barrel of oil produced in this state.

(2) The fee shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b)(1) There is levied a fee of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The fee shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director shall prescribe.

(c)(1) Funds collected by the director under this section are classified as cash fund receipts, and the full amount of the funds shall be deposited into one (1) or more accounts in one (1) or more banks in this state, to be designated by the Department of Finance and Administration, which account or accounts shall be designated "Arkansas Museum of Natural Resources Bond Redemption Fund".

(2) All funds in the fund shall be used exclusively for the payment of principal and interest on bonds issued by the Oil and Gas Commission or the Arkansas Pollution Control and Ecology Commission pursuant to the authority granted herein, and for paying agent's fees and other expenses of the issuance and sale of such bonds.

(d) The fees levied by this section shall be in addition to any and all other fees levied on oil and brine produced in this state.

History. Acts 1980 (1st Ex. Sess.), No. 71, §§ 2-5; A.S.A. 1947, §§ 84-2102.3 — 84-2102.6; Acts 2009, No. 655, § 105.

Amendments. The 2009 amendment substituted "Arkansas Museum of Natural Resources Fund" for "Oil and Brine Museum Funds" in (c)(1), and made minor stylistic changes.

CHAPTER 60

REAL PROPERTY TRANSFER TAX

26-60-105. Levy on deeds, instruments, and writings — Additional tax.

(a) There is levied on each deed, instrument, or writing by which any lands, tenements, or other realty is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by the purchaser's direction, when the consideration for the lands, tenements, or other realty conveyed exceeds one hundred dollars ($100), a tax at the rate of one dollar and ten cents ($1.10) for each one thousand dollars ($1,000) or fractional part thereof.

(b) In addition to the tax levied in subsection (a) of this section, there is levied an additional tax of two dollars and twenty cents ($2.20) for each one thousand dollars ($1,000) or fractional part thereof to be paid by the purchaser and to be allocated and used for the purposes stated in § 15-12-103.

(c)(1) The taxes levied under this section shall be based solely on the consideration given for the lands, tenements, or other realty, and a tax shall not be levied under this section on the consideration given for tangible personal property or intangible personal property.

(2) If a grant, assignment, transfer, or other conveyance involves lands, tenements, or other realty in addition to tangible personal property or intangible personal property, then the taxes levied under

this section shall be based solely on the consideration for the lands, tenements, or other realty.

History. Acts 1971, No. 275, § 1; A.S.A. 1947, § 84-4301; Acts 1987, No. 729, § 4; 1993, No. 1181, § 1; 2011, No. 795, § 1.

Amendments. The 2011 amendment substituted "Levy on deeds, instruments, and writings" for "Tax on transfer instruments" in the section heading; substituted "lands, tenements, or other realty" for "interest or property" in (a); rewrote (b); and added (c).

26-60-107. Real Property Transfer Tax Affidavit of Compliance Form.

(a)(1) The Director of the Department of Finance and Administration shall design a "Real Property Transfer Tax Affidavit of Compliance" form.

(2)(A) The form shall contain essentially the information prescribed in this section.

(B) The affidavit portion of the form shall provide:

(i) The name and address of the grantor or seller;

(ii) The name and address of the grantee or buyer;

(iii) The date of the real property transfer as reflected on the transfer instrument;

(iv) The name of the county where the property is located;

(v) The amount of the full consideration for the transaction or a statement giving the reason the real property transfer tax does not apply to the transaction unless it is clearly evident from the contents of the instrument to be recorded without reference to any other writing or extrinsic evidence that the instrument is exempt from the real property transfer tax under one (1) of the provisions in § 26-60-102, in which case the county recorder may record the instrument without the affidavit. In any case when the county recorder doubts the entitlement to the exemption, the county recorder shall require the affidavit or a certification, setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument; and

(vi) The value of the documentary stamps or documentary symbol attached to the face of the instrument.

(b)(1) If the real property transfer instrument is for a transfer upon which no tax is due but is not clearly exempt under § 26-60-102, the affidavit under subsection (a) of this section shall provide for stating this fact and shall be signed by the grantee or his or her agent, whose address shall be included on the affidavit and be presented with the transfer instrument to the county recorder.

(2) The director shall furnish the "Real Property Transfer Tax Affidavit of Compliance" forms to each revenue office in each county of this state and may make these forms available to the county recorder or any other interested persons in each county upon request to the director.

(3)(A) The grantee or his or her agent shall complete the affidavit, including a statement of the full consideration for the transaction and

the amount of tax to be reflected by documentary stamps or a documentary symbol on the face of the instrument.

(B) The grantee or his or her agent shall attach the proper number of documentary stamps or the proper documentary symbol to the face of the instrument in such a manner that all documentary stamps or the documentary symbol will be fully visible in the records of the county recorder where the county recorder maintains records by reproducing the instrument by photographic, photocopy, or other reproductive method.

(c)(1) When it is clearly evident from the contents of the instrument without reference to any other writing or extrinsic evidence that the instrument is exempt from the real property transfer tax under one (1) of the provisions in § 26-60-102, the county recorder may record the instrument without requiring the certification allowed as an alternative to the affidavit.

(2) If the county recorder doubts the entitlement to the exemption, the county recorder shall require a certification or affidavit setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument.

(d)(1) The affidavits in the files of the director are public records governed by the same rules as are applied to the disclosure of motor vehicle titling and registration information.

(2) The copies of the affidavit in the hands of the county assessor are public records subject to the same laws regarding disclosure as all other taxpayer records of the county assessor.

(e)(1) Upon receipt of the instrument, the county recorder shall cancel the documentary stamps or documentary symbol or shall note that the instrument is exempt or that no tax is due on the face of the instrument.

(2) The county recorder shall place on the face of the affidavit a file stamp and the book and page or instrument number of the recorded instrument.

(f) The director may:

(1)(A) Investigate the possibility of replacing or supplementing the paper Real Property Transfer Tax Affidavit of Compliance presently used as proof of compliance with the real property transfer tax with alternative proofs of compliance, including without limitation electronic affidavits with electronic signatures.

(B) The director shall collaborate with attorneys at law, representatives of title companies, county recorders, and other interested parties to recommend an alternative method of providing proof of compliance with the real property transfer tax.

(C) If an investigation is undertaken, the director shall complete the investigation by July 1, 2012; and

(2)(A) Promulgate rules to implement alternative methods of providing proof of compliance with the real property transfer tax that ensure that the grantee is in full compliance with the law and the use of documentary symbols.

(B) Before promulgating any rules, the director shall report the finding of the investigation authorized under subdivision (f)(1) of this section to the Speaker of the House of Representatives and the President Pro Tempore of the Senate if the General Assembly is in session or to the Legislative Council during an interim.

History. Acts 1971, No. 275, § 5; 1983, No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1063, § 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305; Acts 2011, No. 700, § 1.

Amendments. The 2011 amendment deleted "which shall be in triplicate" at the end of (a)(1); in (a)(2)(B), inserted "of the form" and deleted "space for" at the end; substituted "instrument" for "document" in the first sentence of (a)(2)(B)(v); inserted "or documentary symbol" with minor variation in (a)(2)(B)(vi), (b)(3)(A), and (e)(1); in (b)(1), substituted "affidavit under subsection (a) of this section" for "same affidavit" and deleted "in a space provided" following "be included"; in (b)(3)(B), inserted "or the proper documentary symbol," substituted "documentary stamps or the documentary symbol" for "such stamps," and "instrument" for "document"; deleted former (d)(1)(A) and (B) and redesignated (d)(2)(A) as (d)(1) and (d)(2)(B) as (d)(2); deleted "and regulations" following "same rules" in (d)(1); and added (f).

26-60-108. Real Property Transfer Tax Affidavit of Compliance and Receipt — Completion, storage, audit, etc.

(a) The Director of the Department of Finance and Administration or his or her agent before accepting payment of the real property transfer tax shall require that the affidavit portion of the Real Property Transfer Tax Affidavit of Compliance form and receipt be completed, including the statement of the full amount of the consideration for the transaction and the amount of tax to be reflected on the receipt portion thereof in evidence that such information was furnished by the person signing the affidavit before the director shall receive payment of the tax, and sign the receipt. The director shall attach the stamps to the face of the instrument.

(b)(1) The original copy of the affidavit and receipt shall be retained by the director or his or her agent and shall be treated as a confidential tax record in the same manner as required by law for confidentiality of state income tax returns.

(2) The information shall be released to duly elected county assessors and become a public document.

(c)(1) The clerk's copy of the affidavit and receipt shall be delivered to the person paying the tax and the receipt portion may be detached and retained by the taxpayer.

(2) The clerk's copy of the affidavit shall be presented to the county recorder of deeds, who shall review and determine that the same is in compliance with this chapter before the instrument of real property transfer may be accepted for recordation and record the receipt number evidencing payment of the tax on the real property transfer instrument.

(3) In the case of instruments exempt from the tax, the county recorder shall record a notation to this effect on the transfer instruments.

(4) The county recorder shall place on the face of the affidavit a file stamp and the book and page numbers or instrument number.

(d)(1) The copies of the affidavit stamped as required above and as required in § 26-60-107(b)(3)(A) shall be placed by the county recorder in a box or file kept for such purpose.

(2) At least weekly, the Revenue Division of the Department of Finance and Administration shall pick up the affidavits and shall attach those upon which tax is paid to the original copy thereof retained in the Revenue Division of the Department of Finance and Administration's files.

(e) Copies of the affidavits shall be kept for audit for compliance with this chapter and for audit by the Division of Legislative Audit.

(f) The triplicate copy shall be made available to the county assessor.

(g) If authorized by the director, an electronic copy of an affidavit described in this section may be used and retained in the same manner as other electronic documents.

History. Acts 1971, No. 275, § 5; 1983, No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1063, § 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305n; Acts 2011, No. 700, § 2.

Amendments. The 2011 amendment added (g).

26-60-109. Documentary stamps or symbols.

(a) The Director of the Department of Finance and Administration shall:

(1) Design documentary stamps or documentary symbols in appropriate denominations; and

(2) Make the documentary stamps and documentary symbols available for purchase at offices of the Revenue Division of the Department of Finance and Administration and by consignment arrangement with title companies, banks, and savings and loan associations throughout the state.

(b) The director may:

(1)(A) Investigate the possibility of replacing or supplementing the paper documentary stamps presently used as proof of compliance with the real property transfer tax with alternative proofs of payment, including without limitation ink-based or computer-generated symbols to be placed on instruments evidencing a transfer of real property.

(B) The director shall collaborate with attorneys at law, representatives of title companies, county recorders, and other interested parties to recommend possible alternative methods of providing proof of payment of the real property transfer tax.

(C) If an investigation is undertaken, the director shall complete the investigation by July 1, 2012; and

(2)(A) Promulgate rules to implement alternative methods of providing proof of payment of the real property transfer tax that ensure that the grantee is in full compliance with the law.

(B) Before promulgating any rules, the director shall report the finding of the investigation authorized under § 26-60-107(f)(1) to the Speaker of the House of Representatives and the President Pro

Tempore of the Senate if the General Assembly is in session or to the Legislative Council during the interim.

History. Acts 1971, No. 275, § 5; 1971, No. 398, § 1; 1985, No. 926, § 4; 1985, No. 1063, §§ 1, 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305; Acts 1989, No. 513, § 1; 2005, No. 260, § 1; 2011, No. 700, § 3.

Amendments. The 2011 amendment added "or symbols" in the section head; subdivided the former paragraph as (a), (a)(1) and (a)(2); inserted "or documentary symbols" in (a)(1); substituted "the documentary stamps and documentary symbols" for "the stamps" in (a)(2); and added (b).

26-60-110. Recordation of deed.

(a) Before an instrument evidencing a transfer of real property is accepted by a county recorder for recordation, the grantee, buyer, or the agent of the grantee or buyer shall furnish proof of payment of tax or proof of an exemption from payment of the tax required in this chapter.

(b) The county recorder shall not record any instrument evidencing a transfer of title subject to this chapter unless:

(1)(A) The instrument has:

(i) An attached or accompanying affidavit in the form containing the information required in this chapter; and

(ii) Documentary stamps or a documentary symbol attached to the face of the instrument evidencing full payment of the real property transfer tax on the transaction.

(B) The instrument shall contain a notation on its face, which shall be recorded as part of the instrument, that the affidavit was completed; or

(2)(A) In the alternative, the instrument has marked on the instrument or attached to the instrument in a manner that will cause it to be recorded as a part of the instrument the following statement:

"I certify under penalty of false swearing that documentary stamps or a documentary symbol in the legally correct amount has been placed on this instrument".

(B) This statement shall be signed by the grantee or his or her agent, and the grantee's address shall be clearly shown on the instrument.

(c) The county recorder shall not record any instrument on which a documentary stamp or a documentary symbol is attached in a manner that the amount printed on or within each documentary stamp or documentary symbol is not visible.

History. Acts 1971, No. 275, §§ 3, 4; 1983, No. 754, §§ 2, 3; 1985, No. 926, §§ 2, 3; 1985, No. 1063, §§ 1, 2; 1985, No. 1081, §§ 1, 2; A.S.A. 1947, §§ 84-4303, 84-4304; Acts 1995, No. 1299, §§ 1, 2; 2011, No. 700, § 4.

Amendments. The 2011 amendment rewrote the section.

CASE NOTES

Revenue Stamps.

Trial court did not err in awarding an individual punitive damages and attorney fees under § 5-37-226(c), and although the trial court did not make a finding that the instrument was filed with knowledge that it was not genuine or authentic, such a finding was implicit when the court awarded punitive damages under the statute, and the findings were supported by the evidence that the company prepared quitclaim deeds to the entire 40 acres, despite one acre having been carved out, the company was a shell company, and there were no revenue stamps on the deeds under subsection (b) of this section, and the letter attached to the individual's complaint implied that the company was seeking money from the individual in order to clear his title; because the award was based on a statutory remedy, the trial court could have awarded punitive damages without first having awarded compensatory damages. J. Michael Enters. v. Oliver, 101 Ark. App. 48, 270 S.W.3d 388 (2007), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 272 (Apr. 24, 2008).

26-60-111. Filing deed in violation — False information — Penalties.

(a)(1) Any person filing a deed for record who knowingly, willfully, and fraudulently files the deed in violation of this chapter upon conviction thereof in addition to other penalties provided by law shall be subject to a fine of five hundred dollars ($500) or one percent (1%) of the amount of the transaction, whichever is greater.

(2) In addition to such fine and penalties, the affidavit and certification provided for by this chapter are declared to be a return within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the purchase of documentary stamps or a documentary symbol is the payment of the tax due on the return, and the person required to furnish proof of payment is a taxpayer within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) Any person guilty of providing false information on the affidavit or making a false certification or who shall fail to disclose the full amount of the consideration of the transaction on the affidavit and pay the tax due thereon or who makes a false certification and fails to pay the correct amount of tax due as required by this chapter, shall be subject to the penalties provided for in §§ 26-18-201 — 26-18-204.

History. Acts 1971, No. 275, § 8; 1983, No. 754, § 6; 1985, No. 926, § 5; 1985, No. 1063, § 5; 1985, No. 1081, § 5; A.S.A. 1947, § 84-4307; Acts 2011, No. 700, § 5.

Amendments. The 2011 amendment substituted "documentary stamps or a documentary symbol" for "stamps" in (a)(2).

26-60-112. Disposition of funds collected.

(a) The revenues from the additional tax levied by § 26-60-105(b) shall be deemed special revenues and shall be deposited and distributed according to § 15-12-103.

(b) The revenues derived from the tax levied by § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration into the State Treasury, and the Treasurer of State after

deducting three percent (3%) of the revenues for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law shall distribute the net amount of the revenues as follows:

(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

(A) The first one hundred fifty-seven thousand five hundred dollars ($157,500) of the remainder during each fiscal year shall be credited to the County Clerks Continuing Education Fund, the Circuit Clerks Continuing Education Fund, and the County Coroners Continuing Education Fund that are established in the State Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks and coroners in this state, as provided by appropriations enacted by the General Assembly and shall be used as follows:

(i)*(a)* Fifty-two thousand five hundred dollars ($52,500) for county clerks' continuing education.

(b) Any unexpended balances of moneys designated for county clerks' continuing education shall be retained exclusively for the purpose of county clerks' continuing education;

(ii)*(a)* Fifty-two thousand five hundred dollars ($52,500) for circuit clerks' continuing education.

(b) Any unexpended balances of moneys designated for circuit clerks' continuing education shall be retained exclusively for the purpose of circuit clerks' continuing education; and

(iii)*(a)* Fifty-two thousand five hundred dollars ($52,500) for county coroners' continuing education.

(b) Any unexpended balances of moneys designated for county coroners' continuing education shall be retained exclusively for the purpose of county coroners' continuing education; and

(B) The remainder of the ten percent (10%) of the remainder available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county where the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund; and

(2) Ninety percent (90%) of the remainder of the revenues shall be distributed as follows:

(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-1983 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(B)(i) After making the distribution of the revenues as provided in subdivision (b)(2)(A) of this section, the remainder available each

fiscal year shall be credited as special revenues to the State Administration of Justice Fund to be used for supplementing moneys in the State Administration of Justice Fund for court reporter salaries and expenses in the event that the moneys available in the Court Reporter's Fund are inadequate during any fiscal year to make the necessary payments for salary and related expenses of the various court reporters of the state.

(ii) Any amount received over and above this amount shall be credited as special revenues to the County Aid Fund.

History. Acts 1971, No. 275, § 6; 1983, No. 754, § 5; A.S.A. 1947, § 84-4306; Acts 1987, No. 729, § 6; 1993, No. 1054, § 1; 1995, No. 270, § 13; 1995, No. 383, § 2; 1997, No. 788, § 28; 1997, No. 1341, § 27; 1999, No. 361, § 1; 2001, No. 348, § 6; 2007, No. 246, § 3; 2013, No. 551, § 1.

Amendments. The 2013 amendment rewrote (b)(1).

CHAPTER 61

TAX ON TIMBERLANDS AND RANGELANDS

SECTION.

Effective Dates. Acts 2013, No. 1391, § 2: Jan. 1, 2013. Effective date clause provided: "This act is effective for assessment years beginning on and after 2013."

26-61-103. Levy of tax.

There is levied on all timberlands in this state an annual tax of twenty cents (20¢) per acre to be collected under this chapter for deposit into the State Treasury for credit to the State Forestry Fund as special revenues to be used for the maintenance, operation, and improvement of the Arkansas Forestry Commission in its statewide program for the detection, prevention, and suppression of forest fires.

History. Acts 1969, No. 354, § 1; 1977, No. 388, § 2; 1981, No. 426, § 1; 1985, No. 1010, § 1; A.S.A. 1947, § 84-310; Acts 1993, No. 865, § 1; 1993, No. 1112, § 1; 2013, No. 1391, § 1.

Amendments. The 2013 amendment substituted "twenty cents (20¢)" for "fifteen cents (15¢)" and "under" for "in the manner provided in."

Effective Dates. Acts 2013, No. 1391 § 2: Jan. 1, 2013. Effective date clause provided: "This act is effective for assessment years beginning on and after 2013."

26-61-108. Time for payment.

The special taxes levied under this chapter shall be paid by the respective owners of timberlands at the time real property taxes are

paid but in no event later than October 15 of the year next following the year in which the taxes were extended on the tax records.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311; Acts 1993, No. 1039, § 1; 2011, No. 175, § 14.

Amendments. The 2011 amendment deleted "the provisions of" following "levied under" and substituted "October 15" for October 10."

CHAPTER 62

ALTERNATIVE FUELS TAX

SUBCHAPTER.

2. Rates, Licenses, and Records.

Subchapter 2 — Rates, Licenses, and Records

SECTION.

26-62-201. Imposition of tax — Exemptions.

(a)(1) There is hereby levied and imposed an excise tax per gallon equivalent at the rate set forth in subsection (b) of this section on each type of alternative fuels sold or used in this state for the purpose of propelling a motor vehicle or motor vehicles in this state or purchased for sale or use in this state for the purpose of propelling a motor vehicle or motor vehicles in this state.

(2) The Director of the Department of Finance and Administration shall determine the various types of alternative fuels being utilized in this state and the applicable rates to be imposed for each type fuel in accordance with the following provisions of this section, provided that the Director of the Department of Finance and Administration in his or her initial determination at a minimum shall find at least one (1) type of alternative fuels, specifically, natural gas fuels.

(b) The tax rate for each equivalent gallon for each type of alternative fuels shall be in accordance with the following table:

Number of Motor Vehicles Licensed in Arkansas Utilizing Alternative Fuels (for each type of alternative fuels)	Tax Rate Per Equivalent Gallon (for each type of alternative fuels)
0 — 999	$0.050
1,000 — 1,499	$0.085
1,500 — 1,999	$0.105
2,000 — 2,499	$0.125
2,500 — 2,999	$0.145
3,000 & over	$0.165

(c)(1)(A)(i) The tax rate set forth in subsection (b) of this section for each type of alternative fuels from July 1, 1993, through March 31, 1994, shall be determined and published by the Director of the Department of Finance and Administration prior to June 1, 1993, and such rates shall be effective for each type of alternative fuels through March 31, 1994.

(ii) The tax rate set forth in subsection (b) of this section for each type of alternative fuels shall be adjusted if necessary by the Director of the Department of Finance and Administration to be effective on April 1, 1994, and on April 1 of each year thereafter based upon the number of vehicles utilizing alternative fuels, by each type of alternative fuels, licensed in this state, as determined by the Director of the Department of Finance and Administration, as of December 31 of the preceding calendar year.

(B) If a change in the tax rate in accordance with subsection (b) of this section for any type of alternative fuels is required, the Director of the Department of Finance and Administration shall include this in the report required by this section, and the Director of the Department of Finance and Administration shall also notify each alternative fuels supplier of the new tax rate not later than thirty (30) days prior to the effective date of such change.

(2) Notwithstanding any other provision of this chapter, in determining the number of alternative fuels vehicles licensed in this state by each type of alternative fuels in order to determine the tax rate per equivalent gallon, there shall not be taken into account any alternative fuels vehicles owned, licensed, or used by the United States Government, or any agency or instrumentality thereof.

(d) It is the intent of the tax levy set forth in this section to tax each particular type of alternative fuels depending upon the number of alternative fuels vehicles using the particular type of alternative fuels licensed in Arkansas.

(e)(1) The Director of the Department of Finance and Administration may develop a procedure in which the type of alternative fuels or other type of fuel is noted on the certificate of title or certificate of registration of an alternative fuels vehicle.

(2) It is the intention of this subsection to develop a system for the Director of the Department of Finance and Administration and other officials of the State of Arkansas to know the precise number of vehicles using alternative fuels and other fuels licensed in this state, both in the aggregate and by the type of fuel propelling the vehicles.

(f) Not later than February 15 each year, the Director of the Department of Finance and Administration shall file a written report with the Director of State Highways and Transportation setting forth the number of vehicles using alternative fuels and other types of fuels licensed in this state as of the end of the preceding calendar year, both in the aggregate and by each type of fuel, and the amount of tax revenue received by the State of Arkansas on the tax levied by this chapter. The Director of the Department of Finance and Administration shall also

state the tax rate for the next twelve (12) months, beginning as of the first day of April of each year for each type of alternative fuel.

(g) Sales to the United States Government are exempt from the tax levied by subsection (a) of this section.

(h) The tax levied herein shall not apply to alternative fuels imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty (30) equivalent gallons.

History. Acts 1993, No. 1119, § 9; 2009, No. 655, § 106.

Amendments. The 2009 amendment deleted "the Alternative Fuels Commission [abolished]" following "Administration" in (e)(2); in (f), substituted "February 15 each year" for "June 1, 1993, February 15, 1994, and the fifteenth day of February each year thereafter," deleted "and the Director of the Alternative Fuels Commission [abolished]" following "Transportation," and deleted "for the report due February 15, 1994, and the fifteenth day of February for each year thereafter" preceding "the amount of tax revenue"; and made related and minor stylistic changes.

26-62-210. Interstate users and IFTA carrier users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to licensed interstate users and licensed IFTA carrier users of alternative fuels who are entitled to refunds with respect to alternative fuels taxes paid in this state as authorized in § 26-62-209, and upon certification by the Director of the Department of Finance and Administration, the Treasurer of State shall transfer from the gross amount of alternative fuels taxes collected each month the amount to the Interstate Alternative Fuels Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross alternative fuels taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the Director of the Department of Finance and Administration nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim's being filed as a basis for such refund.

(d) The Director of the Department of Finance and Administration in consultation with the Director of State Highways and Transportation is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from licensed interstate users or licensed IFTA carrier users of alternative fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The Director of the Department of Finance and Administration shall first determine with respect to each refund claim filed that the bond of the interstate user or IFTA carrier user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by such user, and the Director of the Department of Finance and Administration may require the increase of the bond if the Director of the Department of Finance and Administration determines it to be inadequate before approving any such claim for refund;

(2) Each licensed interstate user or licensed IFTA carrier user of alternative fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the Director of the Department of Finance and Administration may reject any claim for refund if the Director of the Department of Finance and Administration determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the Department of Finance and Administration in filing the claim therefor;

(3) Each claim for refund must be upon the request of the licensed interstate user or licensed IFTA carrier user, which shall be verified by such user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user or licensed IFTA carrier user of alternative fuels with the Department of Finance and Administration shall reflect thereon the amount of alternative fuels purchased for use in Arkansas during the quarter, the number of equivalent gallons of alternative fuels upon which taxes are due the State of Arkansas for the quarter, and the excess equivalent gallons upon which such user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user or licensed IFTA carrier user may apply for a refund with respect to the number of equivalent gallons of alternative fuels upon which the alternative fuels taxes have been paid during the calendar quarter for which the licensed interstate user or licensed IFTA carrier user is entitled to a refund; and

(5) The Director of the Department of Finance and Administration is authorized to promulgate any such rules or regulations the Director of the Department of Finance and Administration deems desirable in consultation with the Director of State Highways and Transportation regarding refunds to licensed interstate users and IFTA carrier users.

History. Acts 1993, No. 1119, § 18; 2009, No. 655, § 107.

Amendments. The 2009 amendment inserted "and" at the end of (d)(4)(B), and made minor stylistic changes.

CHAPTER 63

ARKANSAS SPECIAL EXCISE TAXES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2013, No. 1164, § 4: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-63-102. Definitions. [Effective until October 1, 2013.]

As used in this chapter:

(1) "Consumer" means a person to which the taxable sale is made or to which a taxable service is furnished;

(2) "Director" means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(3) "Engage in business" means any local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition;

(4)(A) "Gross receipts" or "gross proceeds" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or a taxable service is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the tangible personal property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, or any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale;

(iv) Delivery charge;

(v)*(a)* Installation charge.

(b) However, an installation charge will not be included in the "gross receipts" or "gross proceeds" if it is not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charge has been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) "Gross receipts" or "gross proceeds" does not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or a taxable service, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(5)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii)*(a)* Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (5)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (5)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" in this subdivision (5) shall:

(i) Be used for excise tax purposes under this chapter regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another provision of federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(6) "Long-term rental" means a lease of thirty (30) days or more to a single consumer;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9)(A) "Sale" means the transfer of either the title or possession, except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, giving away, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, to recreational or athletic events, or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of a service except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, any tax levied by this chapter shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(10) "Short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days to a single consumer;

(11) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses; and

(12) "Taxpayer" means any person liable to remit a tax levied by this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter.

History. Acts 2007, No. 182, § 1; 2009, No. 655, § 109.

Publisher's Notes. For text of section effective October 1, 2013, see the following version.

Amendments. The 2009 amendment redesignated (5)(B)(iv) as (5)(C), redesignated the subsequent subdivision accordingly, inserted "'Lease' or 'rental' includes" in (5)(C), and made related changes.

26-63-102. Definitions. [Effective October 1, 2013.]

As used in this chapter:

(1) "Consumer" means a person to which the taxable sale is made or to which a taxable service is furnished;

(2) "Director" means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(3) "Engage in business" means any local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition;

(4)(A) "Gross receipts" or "gross proceeds" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or a taxable service is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the tangible personal property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, or any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale;

(iv) Delivery charge;

(v)*(a)* Installation charge.

(b) However, an installation charge will not be included in the "gross receipts" or "gross proceeds" if it is not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101

et seq., and the installation charge has been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) "Gross receipts" or "gross proceeds" does not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or a taxable service, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(5)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii)*(a)* Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (5)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (5)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" in this subdivision (5) shall:

(i) Be used for excise tax purposes under this chapter regardless of whether a transaction is characterized as a lease or rental under

generally accepted accounting principles, the Internal Revenue Code, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another provision of federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(6) "Long-term rental" means a lease of thirty (30) days or more to a single consumer;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9)(A) "Sale" means the transfer of either the title or possession, except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, giving away, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, to recreational or athletic events, or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of a service except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, any tax levied by this chapter shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii)*(a)* Except as provided in subdivision (9)(D)(ii)(b) of this section, in the case of a lease or rental of tangible personal property for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(b) In the case of a lease or rental of a motor vehicle for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the motor vehicle during the term of the lease or rental;

(10) "Short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days to a single consumer;

(11) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses; and

(12) "Taxpayer" means any person liable to remit a tax levied by this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter.

History. Acts 2007, No. 182, § 1; 2009, No. 655, § 109; 2013, No. 1164, § 2.

Publisher's Notes. For text of section effective until October 1, 2013, see the preceding version.

Amendments. The 2013 amendment in (9)(D)(ii), added "Except as provided in subdivision (9)(D)(ii)(*b*) of this section" and deleted "including motor vehicles and trailers" near the beginning; and added (*b*).

Effective Dates. Acts 2013, No. 1164, § 4: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Subchapter 3 — Rental Taxes

SECTION.

Effective Dates. Acts 2013, No. 1164, § 4: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-63-304. Long-term rental vehicle tax. [Effective October 1, 2013.]

(a)(1) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a long-term rental vehicle tax at the rate of one and five-tenths percent (1.5%) on the gross receipts or gross proceeds derived from a rental of a motor vehicle required to be licensed and that is leased for a period of thirty (30) days or more.

(2) The gross receipts or gross proceeds derived from the rental described in subdivision (a)(1) of this section are taxable regardless of whether the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was paid at the time of registration.

(b) If the Chief Fiscal Officer of the State certifies that three percent (3%) or more of all new motor vehicles registered in Arkansas during a calendar year are leased vehicles based on information and statistics

from a reliable source, such as R.L. Polk & Co., then the long-term rental vehicle tax shall expire on June 30 of the fiscal year following the calendar year for which the certification is made.

(c) The long-term rental vehicle tax shall be remitted to the Director of the Department of Finance and Administration and shall be deposited into the State Treasury as general revenues.

(d) The long-term rental vehicle tax does not apply to:

(1) A diesel truck rented or leased for commercial shipping;

(2) Farm machinery or farm equipment rented or leased for a commercial purpose; or

(3) A gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping.

History. Acts 2007, No. 182, § 1; 2013, No. 1164, § 3.

Publisher's Notes. For version of section effective until October 1, 2013, see the bound volume.

Amendments. The 2013 amendment substituted "are taxable regardless of whether" for "is taxable only if" in (a)(1); and substituted "three percent (3%)" for "ten percent (10%)" in (b).

Effective Dates. Acts 2013, No. 1164, § 4: Oct. 1, 2013. Effective date clause provided: "Sections 1 through 3 of this act are effective on the first day of the calendar quarter following the effective date of this act."

SUBTITLE 6. LOCAL TAXES

CHAPTER 73

TAXATION GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its

approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-73-103. Levy of new taxes permitted — Exceptions.

CASE NOTES

Illegal Exactions.

Stormwater utility fee was not an illegal exaction because § 14-235-223(a)(1) did not state that the fee had to be paid by any beneficiary, whether intended or unintended, of the sewerage system, and the code did not define "sewerage system" to distinguish between the wastewater sewer system and the stormwater sewer system. Morningstar v. Bush, 2011 Ark. 350, 383 S.W.3d 840 (2011).

26-73-106. Revenue Local Tax Revolving Fund — Revenue Local Tax Operating Fund.

(a) There are created on the books of the Treasurer of State, the Auditor of State, and the Director of the Department of Finance and Administration a Revenue Local Tax Revolving Fund and a Revenue Local Tax Operating Fund.

(b) All taxes collected by the director under this subchapter shall be deposited into the State Treasury and credited to the Revenue Local Tax Revolving Fund and transmitted at least quarterly in each state fiscal year to the local government levying the tax.

History. Acts 1977, No. 942, § 6; A.S.A. 1947, § 17-2005; Acts 2009, No. 655, § 108.

Amendments. The 2009 amendment inserted "under this subchapter" in (b).

26-73-111. Special local sales and use tax — Election.

(a) On the date of the adoption of an ordinance levying a special local sales and use tax for the benefit of a county, city, or town, the county, city, or town by ordinance shall provide for calling and holding a special election on the question.

(b) The special election shall be in accordance with § 7-11-201 et seq. and conducted in the manner provided by law for all county or municipal elections unless otherwise specified in this section.

(c) The special election shall be called for a date not later than one hundred twenty (120) days from the date of the action of the governing body in establishing the date of the special election.

(d)(1) The governing body of the county or municipality shall notify the county board of election commissioners that the measure has been referred to a vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(2) The ballot title to be used at the special election shall be substantially in the following form:

"[ ] FOR adoption of a one-fourth of one percent (.25%) special local sales and use tax within .... (name of county or municipality) for support of a Public Mass Transportation System and Facilities."

"[ ] AGAINST adoption of a one-fourth of one percent (.25%) special local sales and use tax within .... (name of county or municipality) for support of a Public Mass Transportation System and Facilities.".

History. Acts 1991, No. 200, § 1; 2005, No. 2145, § 67; 2007, No. 1049, § 89; 2009, No. 1480, § 108.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b).

26-73-112. Special local sales and use tax — Additional tax — Levy collection and enforcement — Proceeds.

(a) The tax authorized by this section and §§ 26-73-110 and 26-73-111 shall be in addition to all other sales and use taxes now or hereafter authorized for counties, cities of the first class, cities of the second class, and incorporated towns.

(b) With the exception of the purpose for which the tax herein authorized may be used, all provisions of § 26-75-201 et seq., being enabling legislation for cities and incorporated towns to levy and collect local sales and use taxes, and §§ 26-74-201 et seq. and 26-74-301 et seq., being enabling legislation for counties to levy and collect local sales and use tax, shall be applicable and controlling in the levy, election, administration, collection, and enforcement of the tax herein authorized, except that the proceeds of a levy made by a county pursuant to this section and §§ 26-73-110 and 26-73-111 shall not be distributed on a per capita basis as provided for by § 26-74-201 et seq. and § 26-74-301 et seq., but shall be remitted and transmitted to the county treasurer and used for the purposes and in the percentage amounts as provided for and set forth in the levying ordinance.

(c) A county, city of the first class, city of the second class, or incorporated town shall use the proceeds of the tax authorized by this section and §§ 26-73-110 and 26-73-111 only to provide the public service and purpose of public mass transportation systems and facilities.

History. Acts 1991, No. 200, § 2; 2009, No. 655, § 110.

Amendments. The 2009 amendment rewrote (c).

26-73-113. Alternative local sales and use tax.

(a)(1)(A) In lieu of using all or a portion of its authority to levy a sales and use tax solely to pay bonded debt under § 14-164-327, the governing body of any municipality or county may adopt an ordinance levying a tax in the amount of one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), or one percent (1%) upon all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941,

§ 26-52-101 et seq., and upon the privilege of storing, using, distributing, or consuming within this state any tangible personal property which is subject to the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq. The ordinance or ordinances must specify that the tax is being levied under this law.

(B) By levying a tax under this section, the municipality or county levying a tax hereunder shall lose its authority to levy up to a one percent (1%) sales and use tax under § 14-164-327 solely to pay bonded debt only to the extent of the tax levied hereunder.

(2) The proceeds of a tax levied under this section may be used for one (1) or more of the following:

(A) With respect to a capital improvement, solid waste management system as defined in § 8-6-203, part of a solid waste management system as defined in § 8-6-203, or any combination of a capital improvement, solid waste management system as defined in § 8-6-203, or part of a solid waste management system as defined in § 8-6-203, financing of one (1) or more of the following:

(i) Operation;

(ii) Maintenance; or

(iii) Rental expense;

(B) Securing the repayment of bonds by the municipality or county issued under §§ 14-164-301 — 14-164-339; or

(C) Acquiring or constructing capital improvements of a public nature for no more than twenty-four (24) months.

(b) To the extent permitted by this section, a governing body levying a tax under this section shall follow the procedures prescribed by the Local Government Bond Act of 1985, § 14-164-301 et seq., and the tax shall be collected, reported, and remitted in the same manner and at the same time as a tax levied under the Local Government Bond Act of 1985, § 14-164-301 et seq.

(c)(1)(A) A municipality or county levying a sales and use tax under this section may abolish the tax or both abolish the tax and levy a new sales and use tax at a lower rate after an election called in the same manner as provided in the Local Government Bond Act of 1985, § 14-164-301 et seq., or by a petition of the qualified voters of the municipality or county which levied the tax. As to a petition of the qualified voters, the provisions of Arkansas Constitution, Amendment 7 shall govern.

(B) A new sales and use tax levied under this subsection shall be at a rate authorized by subsection (a) of this section.

(2) This section shall also apply to any tax levied by ordinance adopted prior to February 28, 1992, so long as:

(A) The ordinance levying the tax recited that the tax was being levied under this section; and

(B) The tax was approved at a general or special election for one (1) or more of the uses set forth in subdivision (a)(2) of this section. The effect of this provision is for such a tax to be levied for the approved uses, whether or not the ordinance levying the tax was adopted and

the election held prior to February 28, 1992, from and after the date a sales and use tax would otherwise become effective under the Local Government Bond Act of 1985, § 14-164-301 et seq.

(3) This section does not prohibit or affect the ability of a municipality or county from levying a sales and use tax under §§ 26-74-201 et seq., 26-74-301 et seq., 26-75-201 et seq., 26-75-301 et seq., and the Local Government Bond Act of 1985, § 14-164-301 et seq., and using all or a portion of the proceeds of the sales and use tax to do one (1) or more of the following with respect to a capital improvement of a public nature:

(A) Operate;

(B) Maintain; or

(C) Finance.

(4) In any municipality or county in which a local sales and use tax has been adopted under this section, and all or a portion of the tax is pledged to secure the payment of bonds, that portion of the tax pledged to retire the bonds shall not be repealed, abolished, or reduced so long as the bonds are outstanding.

(5)(A) If no election challenge is filed within thirty (30) days of the date of the publication of the proclamation of the results of the election under this subsection, the abolition of the tax and the levy of a new tax, if any, shall become effective on the first day of the first month of the calendar quarter subsequent to the expiration of the thirty-day period for challenge in § 14-164-329.

(B)(i) In the event of an election contest, the tax shall be collected as prescribed in this subsection unless enjoined by court order.

(ii) Hearings of such matters of litigation shall be advanced on the docket of the courts and disposed of at the earliest practicable time.

(d) Nothing herein shall be construed to expand or limit the aggregate rate at which a sales and use tax may be levied by municipalities and counties under laws in effect on January 1, 1992.

History. Acts 1991, No. 777, §§ 1, 2; 1992 (1st Ex. Sess.), No. 40, § 1; 1995, No. 565, § 13; 1997, No. 947, § 1; 2009, No. 655, §§ 111, 112.

Amendments. The 2009 amendment, in (a)(2), inserted "one (1) or more of the following" in the introductory language, rewrote (a)(2)(A), which read: "Finance the operation, maintenance and/or rental expense of capital improvements, or a solid waste management system or part thereof as defined in § 8-6-203, or both," and deleted (a)(2)(D), which read: "Any or all of the above"; subdivided (c)(3); and made related and minor stylistic changes.

Subchapter 2 — Municipal Corporations

SECTION.

26-73-205. [Repealed.]

Publisher's Notes. This section, concerning correction of assessments by county court, was repealed by Acts 2009, No. 655, § 113. The section was derived

from Acts 1875, No. 1, §§ 91-93, p. 1; C. & M. Dig., §§ 7590-7592; Pope's Dig., §§ 9676-9678; A.S.A. 1947, §§ 19-4505—19-4507.

CHAPTER 74

COUNTY SALES AND USE TAXES

SUBCHAPTER.

Subchapter 2 — Sales and Use Tax for Capital Improvements

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-74-208. Form of ballot.

(a) The ballot title to be used shall be substantially in the following form:

"[ ] FOR adoption of a .... percent (.... %) sales and use tax within ..... (Name of county)."

"[ ] AGAINST adoption of a .... percent (.... %) sales and use tax within ..... (Name of county).".

(b)(1) The ballot title may also include an expiration date for the levy of the tax, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the tax proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(3)(A)(i) The quorum court of a county may refer to the voters of the county a change in the expiration date for the sales and use tax

approved by the voters to extend the levy of the sales and use tax beyond the expiration date previously approved.

(ii) The proposed expiration date shall be the last day of the last month of a calendar quarter.

(B) If the quorum court of a county refers a change in the expiration date for an existing sales and use tax levied under this subchapter to the voters, the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the expiration date for a sales or use tax levied under this subchapter shall be conducted in the manner provided by law for all other county elections.

(ii) The results of the election under this subsection shall be certified, proclaimed, and subject to challenge under § 26-74-209.

(D)(i) To extend the sales and use tax levied under this subchapter to a new expiration date, the county shall notify the Director of the Department of Finance and Administration of the new expiration date that was approved by the voters after publication of the proclamation has occurred and at least ninety (90) days before the current expiration date of the sales and use tax.

(ii) The sales and use tax extended under this subdivision (b)(3) shall continue to be levied until the new expiration date.

(E) If the voters do not approve a change in the expiration date for the sales and use tax levied under this subchapter, the:

(i) Tax shall continue to be collected until the expiration date previously approved by the voters; and

(ii) Question may be resubmitted to the voters at the time permitted by the election laws and § 26-74-210(a)(1) shall not apply.

(F) An election to change the expiration date for a sales or use tax levied under this subchapter is not an election on the levy of the tax.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax or the allocation or distribution of revenues, or both, and if the tax is approved, the proceeds shall only be used for the designated purposes and distributed in the manner set forth in the ballot.

(B) The county's share of the proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(2)(A) The quorum court of a county may refer to the vote of the people a change in the indicated use of revenues derived from a sales and use tax levied by the county that was approved by the voters, but a change shall not alter the allocation of tax collections among the county and municipalities within the county.

(B) If the quorum court of a county refers to the vote of the people a change in the indicated use of revenues derived from a sales and use tax, the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the vote of the people; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the indicated use of revenues derived from a sales and use tax shall be conducted in the manner provided by law for all other county elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-74-209.

(3) If the voters approve a change in the indicated use of revenues derived from a sales and use tax, the change in the indicated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-74-209.

(4)(A) If the voters do not approve a change in the indicated use of revenues derived from a sales and use tax, the tax shall continue to be collected and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the indicated use of revenues derived from a sales and use tax shall not constitute an election on the levy of the tax.

(5) Notwithstanding anything in this subchapter to the contrary, in any county that a local sales and use tax has been adopted in the manner provided for in this subchapter and a portion of the revenues derived from the tax has been pledged to secure lease rentals or bonds, the purpose for the tax may not be changed to reduce the pledge in favor of the lease or bonds.

(d)(1) The ballot may indicate an effective date for the levy of the tax that is effective later than the effective date provided in § 26-74-209(d)(2)(A)(i).

(2) The effective date of a levy of the tax that is delayed under subdivision (d)(1) of this section shall be:

(A) Stated in the ordinance levying the tax and on the ballot; and

(B) Scheduled on the first day of the first month of a calendar quarter.

(3) The effective date of a levy of the tax that is delayed under subdivision (d)(1) of this section shall not be delayed for more than thirty-six (36) months after the date the tax would be effective under § 26-74-209(d)(2)(A)(i).

(e)(1) Any tax adopted for a specified period of time shall cease to be levied on the date indicated on the ballot.

(2) This section shall be effective retroactive to December 1, 1981, and if a majority of the qualified electors of any county in this state voting on the question at an election held subsequent to this date have voted to adopt a sales tax levy for a specific duration of time as stated on the ballot, the authority to levy the sales tax shall cease on the date specified on the ballot for termination of the sales tax the same as if the

question had been voted upon under the provisions of this subchapter, which are made retroactive to December 1, 1981.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 3; 1983, No. 278, § 3; A.S.A. 1947, § 17-2023; Acts 1991, No. 765, § 7; 1995, No. 565, § 1; 1999, No. 1478, § 1; 2003, No. 1156, § 1; 2005, No. 1160, § 1; 2009, No. 298, § 1; 2009, No. 383, § 1.

Amendments. The 2009 amendment by No. 298, in (d), inserted (d)(1) through (3) and redesignated the remaining text as (e)(1) and (e)(2).

The 2009 amendment by No. 383 inserted (b)(3).

26-74-209. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b) When the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(c) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(d)(1) The county court shall notify the Director of the Department of Finance and Administration of the countywide tax after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(2)(A)(i) Except as provided in subdivision (d)(2)(A)(ii) of this section, if an election challenge is not timely filed, the countywide tax shall be levied, effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day challenge period, on the gross receipts from the sale at retail within the county of all items and services that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(ii) The effective date of the levy of the countywide tax may be delayed under § 26-74-208(d).

(B) In every county where the local sales and use tax has been adopted under this subchapter, there is imposed an excise tax on the storage, use, distribution, or consumption within the county of tangible personal property or services purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the county at the same rate on the sale price of the property or in the case of leases or rentals on the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(3) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(e)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (d) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the court and disposed of at the earliest feasible time.

History. Acts 1981 (1st Ex. Sess.), No. 26, §§ 4-6; A.S.A. 1947, §§ 17-2024 — 17-2026; Acts 1991, No. 765, § 8; 1993, No. 266, § 1; 1995, No. 565, § 2; 2003, No. 1273, § 34; 2009, No. 298, § 2.

Amendments. The 2009 amendment, in (d)(2), inserted (d)(2)(A)(ii), redesignated the remaining subdivision accordingly, inserted "Except as provided in subdivision (d)(2)(A)(ii) of this section" in (d)(2)(A)(i), and made minor stylistic changes.

26-74-210. Resubmission of question of levy or repeal.

(a)(1) When the question of the levy or repeal of a county sales and use tax is submitted to the electors and the proposition is approved or defeated, the question shall not again be submitted to the electors by ordinance of the quorum court of the county or by petition of electors at a special or general election for a period of six (6) months from the date the proposition was last voted upon.

(2)(A) A petition requesting that the issue be submitted to the electors of the county shall contain the signatures of at least fifteen percent (15%) of the electors of the county as determined by the total number of votes cast for all candidates for circuit clerk of the county at the last preceding general election.

(B)(i) The petition shall be filed and verified by the county clerk.

(ii) If the petition is found to be sufficient, the issue shall be submitted to the electors at a special election on a date as may be requested by the petition.

(C) The special election shall be called in accordance with § 7-11-201 et seq. for a date not more than ninety (90) days from the date on which the county clerk certifies the sufficiency of the petition to the county board of election commissioners.

(b)(1) The ballot title for use in an election on the question of abolishing the county sales and use tax shall be the same as indicated in § 26-74-208, except that the word "ABOLISH" shall be substituted for the word "ADOPTION".

(2) The effective date of any affirmative vote to abolish the tax shall correspond to the dates indicated in this subchapter for the initial effective date of the tax.

(c) Notwithstanding anything in this subchapter to the contrary, in any county in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure lease rentals or the payment of bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is effective or any of such bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 8; 1983, No. 723, § 2; 1985, No. 526, § 1; A.S.A. 1947, § 17-2028; Acts 2005, No. 2145, § 68; 2007, No. 1049, § 90; 2009, No. 1480, § 109.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(2)(C).

26-74-214. Disposition of funds.

(a)(1) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and other subchapters authorizing county sales and use taxes in each county and shall deposit all such revenues with the Treasurer of State.

(2)(A) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) of the funds as a charge by the state for its services as specified in this subchapter and all other subchapters authorizing county sales and use taxes and shall credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund.

(B) In addition, the Treasurer of State may retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(i) Make remittances to the county for rebates made by the county for taxes in excess of amounts specified by the particular county ordinances paid by a taxpayer on a single transaction;

(ii) Make refunds for overpayment of the taxes; and

(iii) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(b)(1) Except as set forth in subsections (f)-(h) of this section, all funds received by the Treasurer of State from the sales tax levied by each county after deducting the three percent (3%) for the Constitutional and Fiscal Agencies Fund shall be deposited into the Local Sales and Use Tax Trust Fund and shall be credited to the account of the county in which it was collected.

(2)(A)(i) The Treasurer of State shall monthly transmit to the county treasurer and to the city treasurer of each municipality located in a county levying the tax authorized in this subchapter and all other subchapters authorizing county sales and use taxes their per capita share, if any, of the moneys received by the Treasurer of State from all of the sales taxes levied by the county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(ii) The county treasurer of any county that has levied a sales tax pursuant to this subchapter and that rebates taxes paid on a single transaction in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(B)(i) If the ballot is silent on the method of distribution, it shall be per capita among the county and each municipality located within the county unless an interlocal agreement is executed between the affected county and its municipalities indicating a different distribution.

(ii) If an interlocal agreement is used, a copy of the interlocal agreement shall be furnished to the Treasurer of State and the distribution of the tax shall be as agreed upon in the interlocal agreement.

(iii) The ballot shall specify the method of distribution contained in the interlocal agreement if any method of distribution other than a per capita share is to be used.

(iv) A copy of the ballot shall be furnished to the Treasurer of State.

(c)(1) Funds received by the counties and municipalities pursuant to the provisions of this subchapter may be used by the counties and municipalities for any purpose for which the county general funds or the city general funds may be used, subject to designations set forth in the ballot, if any.

(2)(A) The ballot for the tax may provide for distribution to a public entity in the county other than a municipality or a county.

(B) In the case of allocations other than to a county or municipality, the Treasurer of State shall transmit funds to the county treasurer, and the county treasurer shall promptly transmit the funds to the designated public entity.

(3) If the funds received are as a result of a ballot dedicating all or a portion of a tax to a technical college, community college, two-year college, or satellite campus of a community college for capital improvements or for maintenance and operation, the Treasurer of State shall transmit tax funds for the college to the county treasurer, and the county treasurer shall promptly transmit the funds to the college for which the tax was approved.

(d) The Treasurer of State may make refunds for overpayment of the county sales tax and redeem dishonored checks and drafts issued in payment of the county sales tax from the Local Sales and Use Tax Trust Fund.

(e)(1) When any tax adopted by a county pursuant to this subchapter is abolished, the director shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the county and municipalities in the county at the time of termination of the collection of the tax to:

(A) Cover possible rebates by the county;

(B) Cover refunds for overpayment of taxes; and

(C) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(2) After one (1) year has elapsed after the effective date of the abolition of the tax in any county, the director shall transfer the balance in that county's account to the county and municipalities in the county and shall close the account.

(f)(1) As indicated by a certified copy of an ordinance of the quorum court of the county previously filed with the director and the Treasurer of State, any moneys collected that are pledged to secure lease rentals or the payment of bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into a bank or banks designated by the county, as cash funds, and transmitted to the county subject to the charges payable and retainage authorized in this section.

(2) Charges deducted shall be transmitted to the Treasurer of State, and amounts retained shall be retained by the director as cash funds.

(g)(1) Except for revenue collected under subdivision (g)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this section.

(h) Money collected that is derived from a tax on aviation fuel levied by a county that is not dedicated to a specific purpose and may legally be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the county and transmitted directly to the publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 11; 1983, No. 723, § 3; A.S.A. 1947, § 17-2031; Acts 1989 (3rd Ex. Sess.), No. 61, § 1; 1997, No. 1176, § 4; 1999, No. 1478, § 2; 2003, No. 64, § 1; 2007, No. 166, § 2; 2009, No. 840, §§ 1, 2.

Amendments. The 2009 amendment substituted "(f)-(h)" for "(f) and (g)" in (b)(1); and added (h).

Subchapter 3 — Sales Tax for Capital Improvements

26-74-308. Form of ballot.

(a) The ballot title to be used shall be substantially in the following form:

"[ ] FOR adoption of a .... percent (.... %) sales and use tax within ..... (Name of county)."

"[ ] AGAINST adoption of a .... percent (.... %) sales and use tax within ..... (Name of county).".

(b)(1) The ballot title may also include an expiration date, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(3)(A)(i) The quorum court of a county may refer to the voters of the county a change in the expiration date for the sales and use tax approved by the voters to extend the levy of the sales and use tax beyond the expiration date previously approved.

(ii) The proposed expiration date shall be the last day of the last month of a calendar quarter.

(B) If the quorum court of a county refers a change in the expiration date for an existing sales and use tax levied under this subchapter to the voters, the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the expiration date for a sales or use tax levied under this subchapter shall be conducted in the manner provided by law for all other county elections.

(ii) The results of the election under this subsection shall be certified, proclaimed, and subject to challenge under § 26-74-309.

(D)(i) To extend the sales and use tax levied under this subchapter to a new expiration date, the county shall notify the Director of the Department of Finance and Administration of the new expiration date that was approved by the voters after publication of the proclamation has occurred and at least ninety (90) days before the current expiration date of the sales and use tax.

(ii) The sales and use tax extended under this subdivision (b)(3) shall continue to be levied until the new expiration date.

(E) If the voters do not approve a change in the expiration date for the sales and use tax levied under this subchapter, the tax shall continue to be collected until the expiration date previously approved by the voters.

(F) An election to change the expiration date for a sales or use tax levied under this subchapter is not an election on the levy of the tax.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax, and if the tax is approved, the proceeds shall be used only for the designated purposes.

(B) The county's share of the proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(2)(A) The quorum court of a county may refer to the vote of the people a change in the indicated use of revenues derived from a sales

and use tax levied by the county that was approved by the voters, but a change shall not alter the allocation of tax collections among the county and municipalities within the county.

(B) If the quorum court of a county refers to the vote of the people a change in the indicated use of revenues derived from a sales and use tax, then the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the vote of the people; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the indicated use of revenues derived from a sales and use tax shall be conducted in the manner provided by law for all other county elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-74-309.

(3) If the voters approve a change in the indicated use of revenues derived from a sales and use tax, the change in the indicated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-74-309.

(4)(A) If the voters do not approve a change in the indicated use of revenues derived from a sales and use tax, the tax shall continue to be collected and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the indicated use of revenues derived from a sales and use tax shall not constitute an election on the levy of the tax.

(5) Notwithstanding anything in this subchapter to the contrary, in any county that a local sales and use tax has been adopted in the manner provided for in this subchapter and a portion of the revenues derived from the tax has been pledged to secure lease rentals or bonds, the purpose for the tax may not be changed to reduce the pledge in favor of the lease or bonds.

(d)(1) The ballot may indicate an effective date for the levy of tax that is effective later than the effective date provided in § 26-74-309(d)(2)(A).

(2) The effective date of a levy of the tax that is delayed under subdivision (d)(1) of this section shall be:

(A) Stated in the ordinance levying the tax and on the ballot; and

(B) On the first day of the first month of a calendar quarter.

(3) The effective date of a levy of the tax that is delayed under subdivision (d)(1) of this section shall not be delayed for more than thirty-six (36) months after the date the tax would be effective under § 26-74-309(d)(2)(A).

History. Acts 1981, No. 991, § 3; 1983, No. 278, § 1; A.S.A. 1947, § 17-2012; Acts 1991, No. 765, § 11; 1995, No. 565, § 3; 2003, No. 1156, § 2; 2005, No. 1161, § 1; 2009, No. 298, § 3; 2009, No. 383, § 2.

Amendments. The 2009 amendment by No. 298 added (d).

The 2009 amendment by No. 383 inserted (b)(3).

26-74-309. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b) When the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(c) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(d)(1) The county court shall notify the Director of the Department of Finance and Administration of the countywide tax after publication of the proclamation has occured and ninety (90) days before the effective date of the tax.

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, if an election challenge is not timely filed, the countywide tax shall be levied, effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day challenge period, on the gross receipts from the sale at retail within the county of all items and services that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(B) The effective date of the levy of the countywide tax may be delayed under § 26-74-308(d).

(e)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (d) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the court and disposed of at the earliest practicable time.

History. Acts 1981, No. 991, §§ 4-6; A.S.A. 1947, §§ 17-2013 — 17-2015; Acts 1991, No. 765, § 12; 1993, No. 266, § 2; 1995, No. 565, § 4; 2003, No. 1273, § 39; 2009, No. 298, § 4.

Amendments. The 2009 amendment, in (d)(2), inserted (d)(2)(B), redesignated the remaining text accordingly, inserted "Except as provided in subdivision (d)(2)(B) of this section" in (d)(2)(A), and made minor stylistic changes.

26-74-313. Disposition of funds.

(a) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and other subchapters authorizing county sales and

use taxes in each county. The director shall determine the population of the unincorporated area of each of the counties and shall furnish the information to the Treasurer of State.

(b) Except as set forth in subsections (c), (e), and (f) of this section, any tax collected by the director under this subchapter on behalf of any county shall be deposited with the Treasurer of State in trust and shall be kept in a separate suspense account.

(c) Any moneys collected by the director, as indicated by a certified copy of an ordinance of the quorum court of the county, previously filed with the director and the Treasurer of State, which are pledged to secure the payment of lease rentals or bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into banks designated by the county, as cash funds, and transmitted to the county subject to the charges payable to the State of Arkansas set forth in subsection (d) of this section. Charges deducted shall be transmitted to the Treasurer of State.

(d)(1) The Treasurer of State shall transmit to the treasurer or financial officer of each city and county its per capita share, after deducting the amount required for claims, overpayments, and bad checks, as certified by the director.

(2)(A) Except as is otherwise provided in subdivision (d)(8) of this section, the last official federal decennial census or later special census that included the county as a whole shall be used in computing the per capita share that each city and county shall receive from the proceeds of the tax. Every county that is petitioned by, and city or town located in that county for, a countywide special census to be conducted shall request a countywide special census on the condition that the city or town requesting the census post adequate bond with the county clerk to cover the cost of the census. Further, the cost of conducting the census shall be borne by the several taxing units within the county in the same proportion that they will receive an increase in the distribution of a countywide sales tax as a result of the special census.

(B) However, in the case of those counties in which an official census has been conducted in a municipality therein since the last federal decennial census and before April 7, 1987, the proceeds from the countywide sales tax shall continue to be distributed in the manner and under the same formula as was used for the distribution of funds prior to April 7, 1987, until such time as a countywide census is conducted in that county.

(3) Transmittals shall be made at least quarterly in each fiscal year. Funds so transmitted may be used by the cities and counties for any purpose for which the city's general funds or county's general funds may be used. Before transmitting these funds, the Treasurer of State shall deduct three percent (3%) of the sum collected as a charge by the state for its services specified in this subchapter, and the amount so deducted shall be deposited by the Treasurer of State to the credit of the

Constitutional Officers Fund and the State Central Services Fund or to any successor State Treasury fund or funds established by law to replace the Constitutional Officers Fund and the State Central Services Fund.

(4) The director is authorized to retain in the suspense account a balance not to exceed five percent (5%) of the amount remitted to the local governments. The director is authorized to make refunds from the suspense account of any overpayments made and to redeem dishonored checks and drafts deposited to the credit of the suspense account.

(5) When any tax adopted pursuant to this subchapter is thereafter abolished, the director shall retain in the suspense account for a period of one (1) year five percent (5%) of the final remittance to the local governments at the time of termination of collection of the tax to:

(A) Cover possible refunds for overpayment of the tax; and

(B) Redeem dishonored checks and drafts deposited to the credit of the suspense account.

(6) After one (1) year has elapsed after the effective date of the abolishment of the tax, the director shall remit the balance of the account to the governing bodies of the cities and counties and close the account.

(7) The restriction of the use of the last federal decennial census referred to in this subsection shall not apply in the case of annexation, nor shall it affect the taking of a special census for any purpose other than the distribution of a countywide sales tax.

(8) It is the intention of this subsection that the proceeds from the countywide gross receipts tax shall be allocated and distributed to each county and the municipalities therein on the basis of the last federal decennial census or the last countywide special census, whichever is the most recent. However, in those counties in which one (1) or more municipalities had a special census before April 7, 1987, and the proceeds of the tax were distributed on the basis of the special census, the proceeds of the tax shall continue to be allocated and distributed in the same manner as those funds were distributed before April 7, 1987, until a special countywide census or a federal decennial census is conducted in the county.

(e)(1) Except for revenue collected under subdivision (e)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city and county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

(f) Money collected that is derived from a tax on aviation fuel levied by a county that is not dedicated to a specific purpose and may legally

be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the county and transmitted directly to the publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1981, No. 991, § 10; 1983, No. 725, § 3; A.S.A. 1947, § 17-2019; Acts 1987, No. 688, § 1; 1987 (1st Ex. Sess.), No. 2, § 1; 1987 (1st Ex. Sess.), No. 56, § 1; 1991, No. 765, § 13; 1997, No. 1176, § 7; 2007, No. 166, § 3; 2009, No. 840, §§ 3, 4.

Amendments. The 2009 amendment substituted "(c), (e), and (f)" for "(c) and (e)" in (b); and added (f).

Subchapter 4 — Sales and Use Tax for Counties Without Existing Tax

SECTION.

26-74-407. Applicability of tax.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

26-74-409. Disposition of funds.

(a)(1) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and all other subchapters authorizing a county sales and use tax in each county and shall deposit all such revenues with the Treasurer of State.

(2)(A) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) thereof as a charge by the state for its services as specified in this subchapter and shall credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund.

(B) In addition, the Treasurer of State is authorized to retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(i) Make remittances to the county for rebates made by the county for taxes in excess of amounts specified by the particular county ordinances paid by a taxpayer on a single transaction;

(ii) Make refunds for overpayment of the taxes; and

(iii) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(3) Furthermore, the Treasurer of State shall determine which cities or towns within the county do not levy a local sales tax and remit to

those cities or towns a percentage of the tax based upon the population of the city or town versus the population of the county.

(b)(1) Except as set forth in subsection (g) and (h) of this section, all funds received by the Treasurer of State from the sales tax levied by each county, after deducting the amounts required by subsection (a) of this section, shall be credited to the account of the county where collected.

(2)(A) The Treasurer of State shall monthly transmit to the county treasurer the moneys received by the Treasurer of State from the sales tax levied by such county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(B) The county treasurer of any county which has levied a sales tax pursuant to this subchapter and which rebates taxes paid on a single transaction in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(c) Funds received by the counties pursuant to the provisions of this subchapter may be used by the counties for any purpose for which the county general fund or county road fund may be used, including allocating portions to municipalities located therein.

(d) The Treasurer of State is authorized to make refunds for overpayment of the county sales tax and to redeem dishonored checks and drafts issued in payment of the county sales tax from the Local Sales and Use Tax Trust Fund.

(e) When any tax adopted by a county pursuant to this subchapter ceases, the director shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the county and municipalities therein at the time of termination of the collection of the tax to:

(1) Cover possible rebates by the county;

(2) Cover refunds for overpayment of taxes; and

(3) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(f) After one (1) year has elapsed after the tax ceases in any county, the director shall transfer the balance in that county's account to the county and shall close the account.

(g)(1) Except for revenue collected under subdivision (g)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this section.

(h) Money collected that is derived from a tax on aviation fuel levied by a county that is not dedicated to a specific purpose and may legally be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the county and transmitted directly to the publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1991, No. 885, § 1; 1997, No. 1176, § 8; 2007, No. 166, § 4; 2009, No. 840, §§ 5, 6.

Amendments. The 2009 amendment inserted "and (h)" in (b)(1); and added (h).

Subchapter 5 — Sales Tax on Food and Lodging

26-74-501. Levy of tax.

RESEARCH REFERENCES

ALR. Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes. 61 A.L.R.6th 387.

26-74-503. Payment and collection — Advertising and Promotion Commission.

RESEARCH REFERENCES

ALR. Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes. 61 A.L.R.6th 387.

Subchapter 6 — Sales and Use Tax for Capital Improvements of a Community College

SECTION.
26-74-603. Call for tax election.
26-74-604. Form of ballot.

SECTION.
26-74-605. Conduct of election and results — Challenges.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-74-603. Call for tax election.

(a) Any eligible county may by ordinance of its quorum court levy a countywide sales and use tax in the amount of one-eighth of one percent (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), or one percent (1%) to provide capital improvements to or the maintenance and operation of an eligible campus.

(b)(1) No ordinance shall be adopted by the quorum court of an eligible county for the purpose of levying a tax under this subchapter unless the quorum court shall have been requested to adopt the ordinance by the local board and until a majority of the qualified electors of the eligible county voting on the question at a special election shall have approved levy of the tax.

(2) The election shall be called by ordinance and proclamation issued in accordance with § 7-11-201 et seq.

(3) The ballot for the election shall be subject to the approval of the local board.

(c)(1) The quorum court of an eligible county levying a tax under this subchapter may refer to the voters of the county the question of an extension of the period during which the tax is to be levied and an extension of the period during which the tax cannot be repealed or reduced.

(2) The end of the period for which the tax is levied shall be the last day of a calendar quarter.

(3) The election to extend the period during which the tax authorized under this subchapter is to be levied and to extend the period during which the tax cannot be repealed or reduced shall be called by ordinance issued under § 7-11-201 et seq.

(4) An election to extend the period of the levy of the tax and to extend the period during which the tax cannot be repealed or reduced is not an election on the levy of the tax.

(d) The quorum court shall notify its county board of election commissioners that a measure has been referred to the vote of the people under this section and shall submit a copy of the ordinance calling the election and the proposed ballot language to its county board of election commissioners.

History. Acts 2001, No. 1796, § 1; 2005, No. 2145, § 69; 2007, No. 1049, § 91; 2009, No. 1480, § 110; 2013, No. 1087, § 1.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(2).

The 2013 amendment inserted present (c) and redesignated former (c) as (d); and inserted "under this section" in (d).

26-74-604. Form of ballot.

(a) The ballot for an election called under § 26-74-603(b) shall be substantially in the form and of the content determined by the quorum court of the eligible county.

(b) In addition to the question of the levy of the tax, the ballot for the election called under § 26-74-603(b) at the request of the local board may provide for the dissolution of the district pursuant to the merger of the community college into the qualified university.

(c)(1) The ballot for an election called under § 26-74-603(b) may provide for an effective date for the levy of the tax under § 26-74-605(g) for termination or reduction of the tax after a specified period and for restrictions on the power to repeal or reduce the tax if the agreement for merger is entered into in reliance on such restrictions.

(2) The period for which the tax cannot be repealed or reduced shall not exceed thirty (30) years.

(d)(1) The ballot for an election called under § 26-74-603(c) on the question of an extension of the period for the levy of the tax and the period during which the tax cannot be reduced or repealed shall state the period during which the levy of the tax is to be extended and the new period during which the tax cannot be reduced or repealed.

(2) After giving effect to the proposed extension period, the period for which the tax cannot be repealed or reduced shall not exceed thirty (30) years from the effective date of the tax.

History. Acts 2001, No. 1796, § 1; 2013, No. 1087, § 2.

Amendments. The 2013 amendment inserted "called under § 26-74-603(b)" in (a); inserted "for the election called under § 26-74-603(b)" in (b) and (c)(1); substituted "in accordance with" for "under" in (c)(1); and added (d).

26-74-605. Conduct of election and results — Challenges.

(a) An election called under § 26-74-603 shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b)(1) Notice of the election shall be given by the county clerk by one (1) publication in a newspaper having a general circulation within the eligible county not less than ten (10) days prior to the election.

(2) No other publication or posting of a notice by any other public official shall be required.

(c) When the election results have been certified, the county judge shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the eligible county.

(d) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the eligible county within thirty (30) days after the date of publication of the proclamation.

(e)(1)(A) If a challenge to an election called under § 26-74-603(b) is not timely filed, there shall be levied effective on the first day of the

first month of the calendar quarter after a minimum of sixty (60) days' notice by the Director of the Department of Finance and Administration to sellers and subsequent to the expiration of the thirty-day challenge period a countywide tax on the gross receipts from the sale at retail within the eligible county of all items that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(B) Furthermore, in every eligible county in which a local sales and use tax has been adopted under this subchapter, there is imposed an excise tax on the storage, use, distribution, or consumption within the eligible county of taxable services and tangible personal property purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the eligible county at the same rate as on the sale price of the property or in the case of leases or rentals of the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(2) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(f)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (e) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the courts and disposed of at the earliest feasible time.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the effective date of the levy of the tax may be delayed beyond the effective date as set forth in subsection (e) of this section to a date to be determined as set forth in the ballot, which date must be the first day of a calendar quarter.

(h)(1) To extend the period for the levy of a tax under § 26-74-603(c), after the publication of the proclamation has occurred and at least ninety (90) days before the current period for the levy of the tax is set to expire, the county shall notify the director of the new period for the levy of the tax that was approved by the voters.

(2) A tax extended under § 26-74-603(c) shall continue to be levied until the end of the new tax period.

(3) If the voters do not approve a change in the period for the levy of the tax, the:

(A) Tax shall continue to be levied until the end of the period previously approved by the voters; and

(B) Question may be resubmitted to the voters at the time permitted by the applicable election laws.

History. Acts 2001, No. 1796, § 1; 2003, No. 1273, § 48; 2013, No. 1087, §§ 3-5.

Amendments. The 2013 amendment, in (a), substituted "An election" for "The election" and inserted "called under § 26-74-603"; substituted "If a challenge to an election called under § 26-74-603(b) is not timely" for "If no election challenge is timely" in (e)(1)(A); in (e)(1)(B), substi-

tuted "in which a" for "where the" and "under" for "pursuant to the provisions of"; and added (h).

CHAPTER 75

MUNICIPAL SALES AND USE TAXES

SUBCHAPTER.

Subchapter 2 — Sales and Use Tax for Capital Improvements

SECTION.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-75-204. Issuance of bonds.

(a) A city levying the tax as permitted in this subchapter in addition to the authority existing under the laws of the state is authorized to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a "project", within or near such city and is authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues which the city is entitled to receive from the tax levied by such city pursuant to this subchapter to pay lease rentals or the principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a city pursuant to this subchapter shall be authorized by ordinance of the governing body. The bonds may:

(1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;

(2) Be exchangeable for bonds of another denomination;

(3) Be in such form and denominations;

(4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear such date or dates;

(7) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(8) Bear interest at such rate or rates;

(9) Be payable in such medium of payment;

(10) Be subject to such terms of redemption; and

(11) May contain such other terms, covenants, and conditions, as the ordinance authorizing their issuance may provide, including, without limitation, those pertaining to:

(A) The custody, investment, and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the clerk or recorder of the city, shall be filed with the Director of the Department of Finance and Administration and with the Treasurer of State.

(d) The bonds shall be executed by the mayor of the city and attested by the clerk or recorder of the city, by their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the mayor. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the city issuing the bonds.

(e) The bonds shall not be general obligations of the city involved, but shall be special obligations secured and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the city within the meaning of any constitutional or statutory limitation. The principal of, and interest on, all bonds issued under the authority of this subchapter shall be secured by a pledge of, and shall be payable from, all or any part of the revenues derived from the tax levied by the city pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by other laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues of such facilities. The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the city and the holders and registered owners of the bonds issued by the city under the authority of this subchapter, which contract, and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the city may be enforced by mandamus or any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

(f) The ordinance authorizing the bonds may provide for the execution by the city with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the priority between and among successive issues and series, and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body including, without limitation, those pertaining to:

(1) The custody, investment, and application of the proceeds of bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(g) Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of the sale. In either case, the bonds may be sold at such price as the city may accept, including sale at a discount.

(h) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds including capital in

their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law. Any municipality or county, or any board, commission, or other authority established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

(i) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(j) Revenue bonds may be issued hereunder for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 15, as added by Acts 1983, No. 726, § 6; A.S.A. 1947, § 19-4534; Acts 2009, No. 655, § 114.

Amendments. The 2009 amendment substituted "city issuing the bonds" for "county issuing the bonds" in (d).

26-75-207. Levying of tax.

(a)(1) The governing body of any city may adopt an ordinance levying a local sales and use tax in the amount of one-eighth of one percent (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), one percent (1%), or any combination of these amounts for the benefit of the city in accordance with the provisions of this subchapter.

(2) Each local sales and use tax authorized under this subchapter shall be adopted by ordinance or by petition as described in subsection

(b) of this section and with the approval of the voters of the municipality in accordance with this subchapter.

(b)(1) A legal voter of a city may file a petition with the governing body of that city requesting a special election on the question of levying a local sales and use tax authorized under this subchapter in an amount as provided in subdivision (a)(1) of this section.

(2) The petition shall be signed by a number of the legal voters in the city that is no less than fifteen percent (15%) of the number of votes cast for the office of city clerk at the last preceding general election.

(c)(1) The governing body of the city by such levying ordinance or the petition described in subsection (b) of this section is not required to but may provide for an expiration date for such local sales and use tax.

(2) If an expiration date is provided, that date shall be the last day of the last month of a calendar quarter.

(d)(1) The levying ordinance or the petition may indicate an effective date for the ordinance or petition that is effective later than the effective date provided in § 26-75-209(1)(D)(ii).

(2) The effective date of the ordinance or petition delayed under subdivision (d)(1) of this section shall:

(A) Be scheduled on the first day of the first month of a calendar quarter; and

(B) Not be delayed for more than thirty-six (36) months after the date the ordinance or petition would be effective under § 26-75-209(1)(D)(ii).

(e) The sales tax portion of any local sales and use tax adopted under this subchapter shall be levied by the governing body on the receipts from the sale at retail of all items and services that are subject to taxation under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1991, No. 765, § 14; 1991, No. 1019, § 1; 1995, No. 565, § 6; 2001, No. 1561, § 5; 2003, No. 1273, § 52; 2007, No. 116, §§ 1, 2; 2009, No. 957, § 1.

Amendments. The 2009 amendment inserted (d) and redesignated the subsequent subsection accordingly.

26-75-208. Special election required.

(a)(1) On the date of the filing of a petition described in § 26-75-207(b) or on the date of adoption of an ordinance levying a local sales and use tax for the benefit of the city, or within thirty (30) days following the filing of the petition described in § 26-75-207(b) or adoption of the ordinance, the city by ordinance shall provide for the calling of a special election on the question in accordance with § 7-11-201 et seq.

(2) The special election shall be called for a date no later than one hundred twenty (120) days from the date of action of the governing body in establishing the date of the special election.

(3) The date for the special election may be the same as the date for the next regular municipal election if the next regular municipal election is to be held within the one-hundred-twenty-day period.

(4) The governing body of the city shall notify the county board of election commissioners that the question has been referred to the vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(5) The election shall be conducted in the manner provided by law for all other municipal elections unless otherwise provided in this subchapter.

(b)(1) The ballot title to be used at such election shall be substantially in the following form:

"[ ] FOR adoption of a .... percent (.... %) local sales and use tax within ..... (name of city)."

"[ ] AGAINST adoption of a .... percent (.... %) local sales and use tax within ..... (name of city)."

(2) If an expiration date as described in § 26-75-207(c) for the local sales and use tax has been provided for by the governing body of the city in the levying ordinance or the petition described in § 26-75-207(b), the ballot title shall also include an expiration date for the levy of the tax, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(3)(A)(i) The governing body of a city may refer to the voters a change in the expiration date for the sales and use tax approved by the voters to extend the levy of the sales and use tax beyond the expiration date previously approved.

(ii) The proposed expiration date shall be the last day of the last month of a calendar quarter.

(B) If the governing body of a city refers a change in the expiration date for an existing sales and use tax levied under this subchapter to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the expiration date for a sales and use tax levied under this subchapter shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of the election under this subsection shall be certified, proclaimed, and subject to challenge under § 26-75-209.

(D)(i) To extend the sales and use tax levied under this subchapter to a new expiration date, the city shall notify the Director of the Department of Finance and Administration of the new expiration date that was approved by the voters after publication of the proclamation has occurred and at least ninety (90) days before the current expiration date of the sales and use tax.

(ii) The sales and use tax extended under this subdivision (b)(3) shall continue to be levied until the new expiration date.

(E) If the voters do not approve a change in the expiration date for the sales and use tax levied under this subchapter, the:

(i) Sales and use tax shall continue to be collected until the expiration date previously approved by the voters; and

(ii) Question may be resubmitted to the voters at the time permitted by the election laws and § 26-75-213(a)(1) shall not apply.

(F) An election to change the expiration date for a sales and use tax levied under this subchapter is not an election on the levy of the sales and use tax.

(4)(A) If an effective date for the ordinance or petition is delayed under § 26-75-207(d), the ballot title shall also include the effective date of the ordinance or petition or the effective date of the levy of the tax.

(B) If the ballot title with the delayed effective date is approved by the voters, the ordinance or petition or the tax shall not become effective until the date stated on the ballot.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax.

(B) If the ballot indicates designated uses and the tax is approved, the proceeds shall only be used for the designated uses set forth in the ballot.

(2) The proceeds may be used for other designated uses if the electors approve a change in the designated use of the revenues by vote under this subsection.

(3)(A) The governing body of a city may refer to the voters a change in the designated use of revenues derived from a sales or use tax that was approved by the voters.

(B) If the governing body of a city refers a change in the designated use of revenues derived from a sales or use tax to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the designated use of revenues derived from a sales or use tax shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-75-209.

(4) If the voters approve a change in the designated use of revenues derived from a sales or use tax, the change in the designated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-75-209.

(5)(A) If the voters do not approve a change in the designated use of revenues derived from a sales or use tax, the tax shall continue to be collected, and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the designated use of revenues derived from a sales or use tax shall not constitute an election on the levy of the tax.

(6) Any city that has levied a local sales and use tax under this subchapter with a portion of the revenues derived from the tax pledged to secure lease rentals or bonds may not change the tax to reduce the pledge in favor of the lease or bonds.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1991, No. 765, § 15; 1991, No. 1019, § 2; 2005, No. 1269, § 1; 2005, No. 2145, § 70; 2007, No. 116, § 3; 2007, No. 1049, § 92; 2009, No. 382, § 1; 2009, No. 957, § 2; 2009, No. 1480, § 111.

Amendments. The 2009 amendment by No. 382 inserted (a)(5); and rewrote (b)(3).

The 2009 amendment by No. 957 added (b)(4).

The 2009 amendment by No. 1480 substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(1).

26-75-209. Effective date of ordinance.

In order to provide time for the preparations for election set forth in this subchapter and to provide for the accomplishment of the administrative duties of the Director of the Department of Finance and Administration, the following effective dates are applicable with reference to any such ordinance levying such tax:

(1)(A) The ordinance or petition described in § 26-75-207 levying the tax shall not be effective until after the election has been held.

(B) Following the election, the mayor of the city shall issue his or her proclamation of the results of the election with reference to the local sales and use tax, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city.

(C) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county where the city is located within thirty (30) days of the date of publication of the proclamation.

(D)(i) The mayor of the city shall notify the director of the rate change after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(ii) If an election challenge is not filed within the thirty-day challenge period, the ordinance or petition described in § 26-75-207 shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the full thirty-day period of challenge.

(iii) The effective date of the ordinance or petition may be delayed under § 26-75-207(d).

(E) The rate change shall become applicable on the first day of a quarter after one hundred twenty (120) days' notice by the director to sellers on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog; and

(2)(A) In the event of an election contest, the tax shall be collected as prescribed in subdivision (1) of this section unless enjoined by a court order.

(B) A hearing of these matters of litigation shall be advanced on the docket of the court and disposed of at the earliest feasible time.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1993, No. 266, § 4; 1995, No. 565, § 7; 2003, No. 1273, §§ 53, 54; Acts 2007, No. 116, §§ 4, 5; 2009, No. 957, § 3.

Amendments. The 2009 amendment made minor stylistic changes in (1)(D)(ii), and inserted (1)(D)(iii).

26-75-210. Abolishment of tax.

(a)(1) Except as set forth in subsection (b) of this section, in any city in which a city sales and use tax has been adopted in the manner provided in this subchapter, and subsequent to the adoption of the city tax the county where the city is located enacts a county sales and use tax, then the city may abolish its sales and use tax:

(A) By a roll call of two-thirds (⅔) of all the members elected to the governing body of the city, excluding the mayor; or

(B) After an election called by:

(i) Action of the governing body of the city; or

(ii) A petition of the qualified voters in the city.

(2) In all other cases, except under subsection (b) of this section, the city may abolish all or a portion of the sales and use tax by:

(A) A roll call vote of two-thirds (⅔) of all members elected to the governing body of the city, excluding the mayor, if the governing body of the city has determined that the purposes of the tax cannot be fulfilled or cannot continue to be fulfilled; or

(B) After an election called by:

(i) Action of the governing body of the city; or

(ii) A petition of the qualified voters in the city.

(3) The initiative procedures in Arkansas Constitution, Article 5, § 1, and any ordinances of the city's governing initiative procedures shall govern the petition of the qualified voters under this subsection and the calling and holding of an election concerning the abolishment of the tax.

(4) The governing body of the city may call for an election under this subsection according to the procedures set forth in this subchapter for the calling of the initial election on such question.

(5)(A) The ballot title for use in any election under this subsection shall be substantially the same as indicated in § 26-75-208(b), except that the word "ABOLITION" shall be substituted for the word "ADOPTION" as it appears in the ballot title set forth in § 26-75-208(b).

(B) A ballot title that contains a question for qualified voters on whether to continue the levy of a local sales and use tax complies with this subdivision (a)(5).

(b)(1) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is in effect or any of the bonds are outstanding.

(2) The bonds shall not be deemed outstanding to the extent that sufficient tax collections have been set aside to pay the bonds when due.

(c) The effective date of any affirmative vote of the qualified voters to abolish the tax under subsection (a) of this section shall correspond to the dates indicated in § 26-75-209 for the initial effective date of the tax.

(d)(1) The effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (a) of this section shall be on the first day of the calendar quarter after the expiration of ninety (90) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the Director of the Department of Finance and Administration certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(2) A copy of the ordinance shall be attached to the certificate.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; 1983, No. 726, § 2; A.S.A. 1947, § 19-4524; Acts 2005, No. 1270, § 1; 2009, No. 655, § 115.

Amendments. The 2009 amendment rewrote (d)(1).

26-75-213. Resubmission of question of levy or repeal.

(a)(1) Except as provided in § 26-75-210 and in subsection (b) of this section, when the question of the levy or repeal of a city sales and use tax is submitted to the electors and the proposition is approved or defeated, the question shall not again be submitted to the electors by ordinance of the governing body of the city or by a petition of electors for a period of six (6) months from the date the question was last voted upon.

(2) A petition requesting that the question be submitted to the electors of the city shall contain the signatures of at least fifteen percent (15%) of the electors of the city as determined by the total number of votes cast for all candidates for mayor of the city at the last preceding general election.

(3)(A) The petition shall be filed with and verified by the city clerk.

(B) If the petition is found to be sufficient, the question shall be submitted to the electors at a special election on a date as may be requested by the petition.

(4) The special election shall be called in accordance with § 7-11-201 et seq. for a date not more than ninety (90) days from the date on which the city clerk certifies the sufficiency of the petition to the governing body of the city.

(b) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion

pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to the payment of lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is in effect or any of the bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 3; 1983, No. 726, § 3; A.S.A. 1947, § 19-4525; Acts 1989, No. 862, § 1; 2005, No. 2145, § 71; 2007, No. 1049, § 93; 2009, No. 1480, § 112.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(4).

26-75-217. Disposition of funds.

(a)(1) The Treasurer of State shall transmit to the treasurer or financial officer of each such city that city's share of local sales and use taxes collected under this subchapter periodically as promptly as feasible. Transmittals required under this subchapter shall be made at least monthly in each state fiscal year. Funds so transmitted may be used by the city for any purpose for which the city's general funds may be used.

(2) Before transmitting such funds, the Treasurer of State shall deduct three percent (3%) of the sum collected from each such city during such period as a charge by the state for its services specified in this subchapter, and the amount so deducted shall be deposited by the Treasurer of State to the credit of the account of the Constitutional Officers Fund and the State Central Services Fund.

(b)(1) The Treasurer of State is authorized to retain in the suspense account of any city a portion of the city's share of the tax collected under this subchapter. Such balance so retained in the suspense account shall not exceed five percent (5%) of the amount remitted to the city.

(2) The Treasurer of State is authorized to make refunds from the suspense account of any city for overpayments made to such accounts, after such refunds have been approved by the Director of the Department of Finance and Administration, and to redeem dishonored checks and drafts deposited to the credit of the suspense account of such cities.

(c)(1) When any city shall adopt the local sales and use tax and shall thereafter abolish such tax, the Treasurer of State shall retain in the suspense account of such city for a period of one (1) year five percent (5%) of the final remittance to such city at the time of termination of collection of such tax in the city to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts.

(2) After one (1) year has elapsed after the effective date of abolishment of such tax, the Treasurer of State shall remit the balance of such account to the city and close the account. After this one-year period has lapsed and the account is closed, no refund will be allowed.

(d) Any moneys collected which as indicated by a certified copy of an ordinance of the city previously filed with the director and the Treasurer of State are pledged to secure lease rentals or the payment of bonds authorized by this subchapter shall not be deposited into the

State Treasury but shall be deposited by the Treasurer of State into banks designated by the city as cash funds and transmitted to the city subject to the charges payable and retainage authorized in this section. Charges deducted shall be transmitted to the Treasurer of State, and amounts retained shall be retained by the Treasurer of State as cash funds.

(e)(1) Except for revenue collected under subdivision (e)(2) of this section, money collected from a tax on aviation fuel by a city where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city or within the county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

(f) Except for revenue collected under subsection (e) of this section, money collected that is derived from a tax on aviation fuel levied by a city that is not dedicated to a specific purpose and may legally be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the city and transmitted directly to the publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 7; 1983, No. 726, § 5; A.S.A. 1947, § 19-4529; Acts 1997, No. 1176, § 12; 2007, No. 166, § 5; 2009, No. 840, § 7.

Amendments. The 2009 amendment added (f).

Subchapter 3 — Sales Tax for Capital Improvements

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-75-308. Special election to approve.

(a)(1) On the date of the filing of a petition described in § 26-75-307(b) or on the date of adoption of an ordinance levying a local sales and use tax for the benefit of the city, or within thirty (30) days following the filing of the petition described in § 26-75-307(b) or adoption of the ordinance, the city by ordinance shall provide for the calling and holding of a special election on the question in accordance with § 7-11-201 et seq.

(2) The special election shall be called for a date no later than one hundred twenty (120) days from the date of action of the governing body in establishing the date of special election.

(3) The governing body of the city shall notify the county board of election commissioners that the question has been referred to the vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(b)(1) The ballot title to be used at the election shall be substantially in the following form:

"[ ] FOR adoption of a .... percent (.... %) local sales and use tax within ..... (name of city)."

"[ ] AGAINST adoption of a .... percent (.... %) local sales and use tax within ..... (name of city)."

(2) The election shall be conducted in the manner provided by law for all other municipal elections unless otherwise specified in this subchapter.

(c)(1) The ballot title may also include an expiration date, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(3)(A)(i) The governing body of a city may refer to the voters a change in the expiration date for the sales and use tax approved by the voters to extend the levy of the sales and use tax beyond the expiration date previously approved.

(ii) The proposed expiration date shall be the last day of the last month of a calendar quarter.

(B) If the governing body of a city refers a change in the expiration date for an existing sales and use tax levied under this subchapter to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the expiration date for a sales and use tax levied under this subchapter shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of the election under this subsection shall be certified, proclaimed, and subject to challenge under § 26-75-309.

(D)(i) To extend the sales and use tax levied under this subchapter to a new expiration date, the city shall notify the Director of the Department of Finance and Administration of the new expiration date that was approved by the voters after publication of the proclamation has occurred and at least ninety (90) days before the current expiration date of the sales and use tax.

(ii) The sales and use tax extended under this subdivision (c)(3) shall continue to be levied until the new expiration date.

(E) If the voters do not approve a change in the expiration date for the sales and use tax levied under this subchapter, the sales and use tax shall continue to be collected until the expiration date previously approved by the voters.

(F) An election to change the expiration date for a sales and use tax levied under this subchapter is not an election on the levy of the sales and use tax.

(d)(1) The ballot may indicate an effective date for the ordinance or petition or an effective date for the levy of the tax that is effective later than the effective date of the ordinance or petition under § 26-75-309(1)(D)(ii).

(2) The effective date of the ordinance or petition or the effective date of the levy of the tax delayed under subdivision (d)(1) of this section shall be:

(A) Stated in the ordinance or petition levying the tax and on the ballot; and

(B) Scheduled on the first day of the first month of a calendar quarter.

(3) The effective date of an ordinance or petition or a levy of the tax delayed under subdivision (d)(1) of this section shall not be delayed for more than thirty-six (36) months after the date the ordinance or petition would be effective under § 26-75-309(1)(D)(ii).

(e)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales or use tax.

(B) If the tax is approved, the proceeds shall only be used for the designated purposes.

(2) The proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(3)(A) The governing body of a city may refer to the voters a change in the designated use of revenues derived from a sales or use tax that was approved by the voters.

(B) If the governing body of a city refers a change in the designated use of revenues derived from a sales or use tax to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the designated use of revenues derived from a sales or use tax shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-75-309.

(4) If the voters approve a change in the designated use of revenues derived from a sales or use tax, the change in the designated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-75-309.

(5)(A) If the voters do not approve a change in the designated use of revenues derived from a sales or use tax, the tax shall continue to be collected, and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the designated use of revenues derived from a sales or use tax shall not constitute an election on the levy of the tax.

(6) Any city that has levied a local sales and use tax under this subchapter with a portion of the revenues derived from the tax pledged to secure lease rentals or bonds may not change the tax to reduce the pledge in favor of the lease or bonds.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1991, No. 765, § 18; 2005, No. 1269, § 2; 2005, No. 2145, § 72; 2007, No. 116, § 7; 2007, No. 1049, § 94; 2009, No. 382, § 2; 2009, No. 957, § 3[4]; 2009, No. 1480, § 113.

Amendments. The 2009 amendment by No. 382 inserted (c)(3).

The 2009 amendment by No. 957 inserted (d) and redesignated the subsequent subsection accordingly.

The 2009 amendment by No. 1480 substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(1).

26-75-309. Effective date of ordinance.

In order to provide time for the preparations for election set forth in this subchapter and to provide for the accomplishment of the administrative duties of the Director of the Department of Finance and Administration, the following effective dates are applicable with reference to any such ordinance levying such tax:

(1)(A) The ordinance or petition described in § 26-75-307 levying the tax shall not be effective until after the election has been held.

(B) Following the election, the mayor of the city shall issue his or her proclamation of the results of the election with reference to the local sales and use tax, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city.

(C) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county where the city is located within thirty (30) days of the date of publication of the proclamation.

(D)(i) The mayor of the city shall notify the director after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(ii) If an election challenge is not filed within the thirty-day challenge period, the ordinance or petition described in § 26-75-307 shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the full thirty-day period of challenge.

(iii) The effective date of the ordinance or petition may be delayed under § 26-75-308(d).

(E) The rate change shall become applicable on the first day of a quarter after one hundred twenty (120) days' notice by the director to sellers on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog; and

(2)(A) In the event of an election contest, the tax shall be collected as prescribed in subdivision (1) of this section unless enjoined by a court order.

(B) A hearing of these matters of litigation shall be advanced on the docket of the court and disposed of at the earliest practicable time.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1993, No. 266, § 5; 1995, No. 565, § 9; 2003, No. 1273, §§ 60, 61; 2007, No. 116, § 9; 2009, No. 957, § 4[5].

Amendments. The 2009 amendment made minor stylistic changes in (1)(D)(ii), and inserted (1)(D)(iii).

26-75-310. Abolishment of tax.

(a)(1) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be abolished so long as the lease is effective or any of the bonds are outstanding.

(2) The bonds shall not be deemed outstanding to the extent that there are sufficient tax collections set aside to pay the bonds when due.

(b) The city may abolish all or that portion of the sales and use tax that is not pledged to lease rentals during which the lease is effective or to outstanding bonds:

(1) By a roll call vote of two-thirds (⅔) of all members elected to the governing body of the city, excluding the mayor, if the governing body of the city has determined that the purposes of the tax cannot be fulfilled or cannot continue to be fulfilled; or

(2) After an election called by:

(A) Action of the city's governing body; or

(B) A petition of the qualified voters in the city.

(c) The initiative procedures in Arkansas Constitution, Article 5, § 1, and any ordinances of the city's governing initiative procedures shall govern the petition of the qualified voters under subsection (b) of this section and the calling and holding of an election concerning the abolishment of the tax.

(d) The governing body of the city may call for an election under subsection (b) of this section according to the procedures set forth in this subchapter for the calling of the initial election on the question.

(e)(1) The ballot title for use in the election under subsection (b) of this section shall be substantially the same as indicated in § 26-75-308(b), except that the word "ABOLITION" shall be substituted for the word "ADOPTION" as it appears in the ballot title set forth in § 26-75-308(b).

(2) A ballot title that contains a question for qualified voters on whether to continue the levy of a local sales and use tax complies with this subsection.

(f) The effective dates of any affirmative vote by the qualified voters to abolish the tax under subsection (b) of this section shall correspond to the dates indicated in § 26-75-309 for the initial effective date of the tax.

(g)(1) The effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (b) of this section shall be on the first day of the calendar quarter after the expiration of ninety (90) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the Director of the Department of Finance and Administration certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(2) A copy of the ordinance shall be attached to the certificate.

History. Acts 1975, No. 990, § 2; 1983, No. 722, § 2; A.S.A. 1947, § 19-4514; Acts 2005, No. 1270, § 2; 2009, No. 655, § 116.

Amendments. The 2009 amendment rewrote (g)(1).

26-75-312. Collection of tax.

(a)(1) In each city in which a local sales and use tax has been imposed in the manner provided by this subchapter, every retailer shall add the tax imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the tax imposed by this subchapter to his or her sale price, and when added, the combined tax shall:

(A) Constitute a part of the price;

(B) Be a debt of the purchaser to the retailer until paid; and

(C) Be recoverable at law in the same manner as the purchase price.

(2) When the sale price in the city shall involve a fraction of a dollar, the two (2) combined taxes shall be added to the sale price.

(3) A retailer shall be entitled to the same discount with respect to tax remitted under this subchapter as is authorized for the collection

and remission of gross receipts taxes to the State of Arkansas in § 26-52-503.

(b)(1) Any fraction of one cent (1¢) of tax that is less than one-half of one cent (½¢) shall not be collected.

(2) Any fraction of one cent (1¢) of tax equal to one-half of one cent (½¢) or more shall be collected as a whole one cent (1¢) of tax.

(c) In the event the General Assembly or the electors of the state shall either increase or decrease the rate of the state gross receipts tax, the combined rate of state tax and the local sales tax shall be the sum of the two (2) rates.

(d)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on the vendor's sales and use tax report.

(2)(A) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(B) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) This subsection applies only to taxes collected by the Director of the Department of Finance and Administration.

History. Acts 1975, No. 990, § 2; 1981, No. 133, § 2; 1981, No. 861, § 2; A.S.A. 1947, § 19-4514; Acts 1993, No. 669, § 5; 1997, No. 1176, § 14; 2003, No. 747, § 6; 2003, No. 1273, § 63; 2009, No. 655, § 117.

Amendments. The 2009 amendment added (d).

Subchapter 4 — Temporary Tax for Acquisition, Construction, or Improvement of Parks

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Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-75-404. Election requirements and procedure.

(a)(1) When the governing body of any city or town adopts an ordinance levying a local sales and use tax as authorized in this subchapter, the governing body either in the ordinance levying the tax or in a separate ordinance shall provide for submission of the question of the levy to the qualified electors of the city or town either at the next regular municipal election or at a special election.

(2) If the ordinance provides for submitting the question at a special election, the election shall be called in accordance with § 7-11-201 et seq. for a date not more than ninety (90) days from the date of the adoption of the ordinance calling the special election.

(b) The governing body of the city or town shall notify the county board of election commissioners that the question of the levy of the tax has been referred to a vote of the people at the next regular municipal election or at a special election to be held on the date set by ordinance and shall submit a copy of the ballot title to the county board of election commissioners.

(c) The ballot title to be used at the election shall be in substantially the following form:

"[ ] FOR the levy of a temporary one percent (1%) (one-half of one percent (½ of 1%)) local sales and use tax for a period of ....within .... (name of city) for construction and improvement of public parks and recreation facilities."

"[ ] AGAINST the levy of a temporary one percent (1%) (one-half of one percent (½ of 1%)) local sales and use tax for a period of ....within .... (name of city) for construction and improvement of public parks and recreation facilities."

(d)(1) Following the election, the mayor of the city or town shall issue a proclamation of the results of the election, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city or town.

(2)(A) If a majority of the electors voting on the issue vote against the levy of the tax, the tax shall not be levied, and the question of the levy of a tax under this subchapter shall not again be submitted to the electors of the city or town for one (1) year.

(B) If a majority of the electors voting on the issue vote for the levy of the tax, the tax shall be levied and collected as provided for in this subchapter for the period prescribed in the ordinance.

(3)(A) A person desiring to challenge the results of the election shall file the challenge in the circuit court of the county where the city or town is located within thirty (30) days of the date of publication of the proclamation.

(B)(i)*(a)* The mayor of the city or town shall notify the Director of the Department of Finance and Administration of the rate change after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(b) If no election challenge is filed within the thirty-day challenge period, the ordinance shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day period for challenge of the results of the election.

(c) In the case of a purchase made from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog, the applicable date will be the first day of the quarter after a minimum of one hundred twenty (120) days' notice by the director to sellers.

(ii) In the event of an election contest, the tax shall be collected as prescribed in subdivision (d)(3)(B)(i) of this section.

(e)(1) If a majority of electors voting on the issue vote "FOR" the levy of the tax, a copy of the mayor's proclamation of the results of the election shall be transmitted to the director within ten (10) days after the election.

(2)(A) At the time of transmitting the proclamation, the clerk shall also send to the director a map of the city or town clearly showing the boundaries of the city or town.

(B)(i) If any such city or town shall thereafter change or alter its boundaries, the city or town clerk shall forward to the director ninety (90) days before the effective date of the boundary changes a certified copy of the ordinance adding or detaching territory from the city or town, and the ordinance shall be accompanied by a map clearly showing the territory added or detached.

(ii) After receipt of the ordinance and map, the tax imposed under this subchapter shall be effective in the added territory or abolished in the detached territory on the first day of the first month of the calendar quarter following the expiration of thirty (30) days from the date that the annexation or detachment becomes effective or after a minimum of sixty (60) days' notice by the director to sellers, whichever expires last.

History. Acts 1985, No. 488, § 2; A.S.A. 1947, § 19-3648; Acts 1993, No. 266, § 6; 1995, No. 565, §§ 11, 12; 2003, No. 383, § 7; 2003, No. 1273, § 67; 2005, No. 2145, §§ 73, 74; 2007, No. 1049, § 95; 2009, No. 1480, § 114.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(2).

26-75-408. Use of funds.

(a) All revenues received by a city or town from taxes levied pursuant to the authority granted in this subchapter shall be deposited into the city or town treasury and credited to a special account and shall be used for the acquisition, construction, or improvement of parks and recreational facilities within the municipality as prescribed in the levying ordinance.

(b) Any balance remaining in the special account described in subsection (a) of this section after the projects prescribed in the levying

ordinance have been completed and paid for shall be used for maintenance and upkeep of municipal parks and recreational facilities.

History. Acts 1985, No. 488, § 8; A.S.A. 1947, § 19-3654; Acts 2009, No. 655, § 118.

Amendments. The 2009 amendment substituted "special account described in subsection (a) of this section" for "fund" in (b).

Subchapter 5 — Gross Receipts Tax Generally

SECTION.

26-75-502. Authority to levy.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

26-75-506. Disposition of revenues.

(a) All revenues collected by the Director of the Department of Finance and Administration pursuant to the provisions of this subchapter, less three percent (3%) thereof which shall be deducted as a cost of collection and deposited into the State Treasury to the credit of the Constitutional Officers Fund and the State Central Services Fund, shall be remitted by the director to the levying city at the same time the director remits sales tax revenues to the State Treasury.

(b) All funds remitted to the levying city under the provisions of this subchapter shall be deposited into the city general fund of the levying city and used for the purposes prescribed by law.

(c)(1) Except for revenue collected under subdivision (c)(2) of this section, money collected from a tax on aviation fuel levied by a city where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city or within the county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

(d) Except for revenue collected under subsection (c) of this section, money collected that is derived from a tax on aviation fuel levied by a city that is not dedicated to a specific purpose and may legally be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the city and transmitted directly to the

publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 3; A.S.A. 1947, § 19-4510; Acts 2007, No. 166, § 6; 2009, No. 840, § 8.

Amendments. The 2009 amendment added (d).

Subchapter 6 — Advertising and Promotion Commission Act

26-75-602. Gross receipts taxes authorized.

(a) Any city of the first class, city of the second class, or incorporated town by ordinance of the governing body thereof may levy a tax not to exceed three percent (3%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(b) Any city of the first class in which is located a city park of one thousand (1,000) acres or more in a like manner may levy an additional tax of one percent (1%) upon the gross receipts or gross proceeds identified in subsection (c) of this section. Revenues collected from this additional tax shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(c) The tax authorized in this subchapter shall be upon any one (1) or more of the following, as specified in the levying ordinance:

(1) The gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel, house, cabin, bed and breakfast, campground, condominium, or other similar rental accommodations for sleeping, meeting, or party room facilities for profit in such city or town, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and

(2) The portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses as shall be defined in the levying ordinance from the sale of prepared food and beverages for on-premises or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

History. Acts 1965, No. 185, § 1; 1969, No. 123, § 1; 1971, No. 534, § 1; 1977, No. 178, § 1; 1979, No. 926, § 1; 1981, No. 20, § 1; 1981, No. 957, § 1; A.S.A. 1947, §§ 19-4613, 19-4613.1; Acts 1989, No. 626, § 2; 1991, No. 726, § 1; 1993, No. 364, § 1; 1995, No. 300, §§ 1, 2; 1995, No. 931, § 1; 2007, No. 473, § 2; 2009, No. 274, § 1.

Amendments. The 2009 amendment, in (c)(1), inserted "house, cabin, bed and breakfast, campground," deleted "short-term" preceding "condominium," inserted "or other similar" preceding "rental ac-

commodations," and made related changes.

26-75-619. Authority to perform joint audits.

(a) As used in this section:

(1) "City" means a city of the first class, city of the second class, or incorporated town in this state;

(2) "Joint audit" means an audit that is performed by a joint auditor to examine the records of one (1) or more taxpayers and that is necessary to determine the accuracy of a return or to establish the liability of the taxpayer to pay the tax levied by an ordinance of a city under § 26-75-602; and

(3) "Joint auditor" means a person with the necessary experience or training to assume the primary responsibility to conduct a joint audit according to an agreement between the cities;

(4) "Records" means:

(A) The books, records, papers, vouchers, accounts, documents, and relevant property or stock of merchandise of the taxpayer that are in the possession of the taxpayer or of a third party that concern the tax levied under § 26-75-602; or

(B) Tax information from the books and records of the Department of Finance and Administration concerning a taxpayer that is necessary to the performance of a joint audit of a taxpayer and is requested by a joint auditor; and

(5) "Taxpayer" means a person subject to or liable for the tax levied by an ordinance of a city under § 26-75-602.

(b)(1) Two (2) or more cities that have levied a tax and have adopted an ordinance under the authority of § 26-75-603 may agree to a joint audit in order to reduce the expenditure of time and resources necessary to perform the audit.

(2) The ordinance shall enable the advertising and promotion commission of the levying city to enforce the tax through examination of records.

(c) The cities that participate in the joint audit may enter into a joint agreement to employ a joint auditor and to provide any assistance required to the joint auditor in the performance of the joint audit.

(d) At a reasonable time, the joint auditor shall be granted access to examine records permitted by a city ordinance under § 26-75-603 and this section.

History. Acts 2013, No. 712, § 2.

CHAPTER 76

COUNTY PRIVILEGE AND LICENSE TAXES

SUBCHAPTER.

Subchapter 1 — General Provisions

26-76-105. Report of taxes collected and licenses issued.

(a) The privilege taxes paid as provided in this act to the county collector shall be reported by him or her quarterly and paid into the county treasury within twenty (20) days after the granting of the license for which the privilege tax is paid.

(b) Each county collector shall at the end of each quarter make to the clerk of the county a detailed report of the licenses issued by the county collector during the quarter, showing:

(1) The number and date of the license;

(2) The name of the license;

(3) The privilege for which it was issued; and

(4) The amount collected for it.

(c)(1) If a county collector fails to make the report, the county collector shall be notified by the clerk of the county court and required to make the report.

(2) Upon conviction, a county collector who fails to perform any of the duties required of the county collector under this act is guilty of a violation and shall be fined in any sum not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000).

History. Acts 1883, No. 114, § 157, p. 199; 1893, No. 5, § 1, p. 4; C. & M. Dig., § 9847; Pope's Dig., § 13591; A.S.A. 1947, § 84-1506; Acts 2009, No. 655, § 119.

Amendments. The 2009 amendment subdivided (c), substituted "violation" for "misdemeanor" in (c)(2), and made related and minor stylistic changes.

Subchapter 2 — Privileges Taxed Generally

26-76-202. Public exhibitions and auctioneers.

There shall be collected as a county tax:

(1)(A) An amount to be fixed by the county court of each county for each and every public exhibition given by any person in any county in this state, any part of the proceeds of which is for his or her personal profit, and the licenses may be fixed for each exhibition, or monthly, quarterly, or annually, in the discretion of the county court.

(B)(i) This subdivision (1) shall not apply to theaters and opera houses in cities of the first class, cities of the second class, and incorporated towns where no liquor is sold by the management or on the premises.

(ii) In cities of twenty thousand (20,000) inhabitants and over, the license for theaters and opera houses where no liquor is sold on the premises shall be one hundred dollars ($100) for county purposes.

(iii) The exceptions in this subdivision (1) do not apply to what are generally known as theaters comique or variety theaters; and

(2) The sum of ten dollars ($10.00) upon each and every auctioneer who follows the business for profit, for the privilege of selling any lands, goods, wares, and merchandise at public outcry in any county in this state, for the term of six (6) months or less.

History. Acts 1883, No. 114, § 6, p. 199; 1891, No. 72, § 1, p. 129; 1895, No. 102, § 1, p. 148; 1901, No. 165, § 1, p. 318; C. & M. Dig., § 9833; Pope's Dig., § 13574; A.S.A. 1947, § 84-1502; Acts 2009, No. 655, § 120.

Amendments. The 2009 amendment inserted "and" at the end of (1)(B)(iii), and made minor stylistic changes.

26-76-204. Foreign traders and peddlers.

(a)(1) It shall be unlawful for any foreign person or corporation to swap, trade, or traffic in horses or mules in this state, or to peddle organs, stove ranges, or pianos, or vehicles without first paying a license of one hundred dollars ($100) in each county in which they do business.

(2) This section shall not apply to any horse or mule trader, except those who travel through the country carrying their camping outfits and who camp on the public domain.

(b) Upon conviction, a person violating this section is guilty of a violation and shall be fined in any sum not less than one hundred dollars ($100) nor more than three hundred dollars ($300). Each day's violation is a separate offense.

(c)(1) It shall be the duty of the sheriff of the county or the constable of any township to collect the license for his or her county. When collected, it shall be turned over to the county treasurer, the sheriff or constable shall take duplicate receipts for it, with one (1) to be given to the county clerk and one (1) retained as a voucher for his or her respective settlement with the court.

(2) Upon conviction, a sheriff or constable who knowingly fails to perform any of the duties prescribed in this subsection is guilty of a violation and shall be punished by a fine not exceeding two hundred dollars ($200).

History. Acts 1905, No. 181, §§ 1-3, p. 469; C. & M. Dig., §§ 9836, 9837; Pope's Dig., §§ 13577, 13578; A.S.A. 1947, §§ 84-1510 — 84-1512; Acts 2009, No. 655, §§ 121, 122.

Amendments. The 2009 amendment substituted "is guilty of a violation" for "shall be deemed guilty of a misdemeanor" in (b) and (c)(2); substituted "knowingly fails" for "fails willfully" in (c)(2); and made minor stylistic changes.

CHAPTER 77

MUNICIPAL OCCUPATIONAL TAXES AND LICENSES

SUBCHAPTER.
3. Vending and Amusement Machines.

Subchapter 3 — Vending and Amusement Machines

26-77-301. [Repealed.]

Publisher's Notes. This section, concerning vending machines, was repealed by Acts 2009, No. 655, § 123. The section was derived from Acts 1947, No. 344, § 5; A.S.A. 1947, § 84-2609.

For the current laws regulating vending devices, see § 26-57-1001 et seq., and the Vending Devices Decal Act of 1997, § 26-57-1201 et seq

26-77-302. Amusement devices and vendors.

(a) A municipal corporation may license and tax amusement devices defined in § 26-57-402 and vendors of amusement devices defined in § 26-57-402.

(b) However, the fee for the license and tax shall not exceed the amount of tax imposed by § 26-57-404.

History. Acts 1939, No. 201, § 10; A.S.A. 1947, § 84-2617; Acts 2009, No. 655, § 124.

Amendments. The 2009 amendment rewrote the section.

26-77-303. Coin-operated amusement devices.

A municipality may not levy a privilege tax on the basis of §§ 26-57-402 and 26-57-408 — 26-57-421 relating to coin-operated amusement devices. However, §§ 26-57-402 and 26-57-408 — 26-57-421 do not prohibit a municipality from levying privilege taxes under other statutes of this state or under valid municipal ordinances on licensees under §§ 26-57-402 and 26-57-408 — 26-57-421.

History. Acts 1977, No. 553, § 4; 1981, No. 868, § 2; A.S.A. 1947, § 84-2636; Acts 2009, No. 655, § 125.

Amendments. The 2009 amendment rewrote the section.

CHAPTER 78

COUNTY AND MUNICIPAL MOTOR VEHICLE TAX

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-78-103. Procedure for levying.

(a)(1) The counties of the state shall have the first opportunity to levy the County and Municipality Vehicle Tax.

(2)(A) Any levy by a county may be upon owners residing everywhere in the county or only upon owners residing within the county but outside the corporate boundaries of all municipalities in the county.

(B) That is, the tax must cover the entire county or the area outside all municipalities and cannot cover some municipalities and omit others.

(3) This levy may be in any amount not exceeding the authorized maximum.

(4) A municipality in a county may levy the tax only if the county quorum court by the time of adjournment of its regular annual session in any calendar year has failed to levy the tax upon the owners residing within the corporate limits of the municipality or if by the time of adjournment the court has not levied the full amount of the authorized tax for the next calendar year at the regular annual session or at any special session held in any calendar year prior to its regular annual session in the calendar year.

(5) Each levy by the county quorum court or by the governing body of the municipality shall be for collection during the calendar year next following the year in which the levy is made and, except in the case when bonds are issued as authorized, unless the levy is again made, the tax shall cease to be levied at the expiration of the calendar year for which collected and shall not again be collected until levied by the county quorum court by the time of adjournment of the regular annual session of the county quorum court or thereafter by the governing body of a municipality, as indicated.

(b)(1) Notwithstanding other provisions of this chapter, before the tax levied by any county quorum court upon owners residing everywhere in the county or only upon owners residing within the county but outside the corporate boundaries of all municipalities in the county may be collected, the county court shall call a special election in accordance with § 7-11-201 et seq. upon the first levy of the tax by the county quorum court, to be held not more than ninety (90) days from the date

of the adoption of the levy of the tax by the quorum court, at which the qualified electors of the area to be affected by the tax shall vote on the question of the levy of the tax.

(2) If at the special election a majority of the qualified electors of the area affected by the tax voting on the issue at the special election shall vote for the levy of the tax, the tax may be thereafter levied in the area in the manner authorized in subsection (a) of this section, and it shall not be necessary that an election be called again in the area on the question of levying the tax.

(3) If a majority of the qualified electors of the affected area voting on the issue at the special election shall vote against the levy of the tax, the tax shall not be levied in the area.

(4) The quorum court of the county at any subsequent annual meeting may propose the levy of the tax, and the election on the tax shall be called as provided in this section.

(5) A special election held pursuant to this chapter shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, the counting, tabulation, and certification of the special election results shall be in the manner provided by law.

(c)(1) Any tax levied by any municipality under the provisions of this chapter for the first time prior to July 1, 1967, and without the calling of a special election of the qualified electors of the municipality, shall continue in full force and effect without the calling of an election.

(2) However, before the tax levied by the governing body of any municipality for the first time after July 1, 1967, upon vehicle owners residing in the municipality may be collected, the mayor shall call a special election in accordance with § 7-5-103(b) [repealed] to be held not more than ninety (90) days from the date of the adoption of the levy of the tax by the governing body of the municipality, at which the qualified electors of the municipality shall vote on the question of the levy of the tax.

(3) At the special election, if a majority of the qualified electors of the municipality voting on the issue shall vote for the levy of the tax, the tax may be thereafter levied in the municipality in the manner authorized in subsection (a) of this section, and it shall not be necessary that an election be called again in the municipality on the question of levying the tax.

(4) If a majority of the qualified electors of the municipality voting on the issue at the special election shall vote against the levy of the tax, the tax shall not be levied in the municipality.

(5) However, the governing body of the municipality at any time after the expiration of one (1) year from the election in the municipality may propose the levy of the tax, and the election on the tax shall be called as provided in this section.

(6) A special election held pursuant to this chapter shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, the counting, tabulation, and

certification of the special election results shall be in the manner provided by law.

History. Acts 1965, No. 446, § 2; 1967, No. 372, § 1; 1969, No. 97, § 1; A.S.A. 1947, § 76-2302; Acts 2005, No. 2145, § 75; 2007, No. 1049, § 96; 2009, No. 655, § 126; 2009, No. 1480, § 115.

A.C.R.C. Notes. Section 7-5-103 referred to in subdivision (c)(2) of this section was repealed by Acts 2009, No. 1480, § 16. See § 7-11-101 et seq. for current law on special election procedures.

Amendments. The 2009 amendment by No. 655 substituted "cease to be levied" for "drop" in (a)(5).

The 2009 amendment by No. 1480 substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(1).

CHAPTER 80

SCHOOL DISTRICT TAXES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2009, No. 1397, § 10: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the constitutional obligation of the state to ensure that the state's public school children receive an equal opportunity for an adequate education; that the timely and accurate collection and reporting by counties of the proceeds generated from the uniform rate of tax is necessary to ensure educational adequacy; that the Treasurer of State, the Department of Education, the Assessment Coordination Department, and the counties need to implement the reporting process required under this act so that timely and accurate calculations for public school funding will be made before the beginning of the 2009-2010 school year. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-80-101. Uniform rate of tax.

(a) There is established a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real property, personal property, and utility property in the state to be used solely by school districts to which it may be distributed according to law for maintenance and operation of the schools.

(b)(1)(A) The uniform rate of tax shall be assessed and collected in the same manner as other school property taxes, but the net revenues from the uniform rate of tax shall be remitted to the Treasurer of State and distributed by the state to the county treasurer of each county for distribution to the school districts in that county as provided by subsection (c) of this section.

(B) No portion of the revenues from the uniform rate of tax shall be retained by the state but shall be distributed back to the school district from which the revenues were received or to other school districts pursuant to subsection (c) of this section.

(C) No additional fees or charges shall be assessed at the local level for transmission and redistribution of these funds.

(D) The revenues so distributed shall be used by the school districts solely for maintenance and operation of schools.

(2)(A) The Treasurer of State shall establish procedures, forms, and documentation requirements for the certification of net revenues produced by the uniform rate of tax to be deposited with the Treasurer of State and redistributed as provided by law.

(B) Further, the Treasurer of State shall establish procedures, forms, and documentation requirements for the actual deposit and redistribution of the net revenues produced by the uniform rate of tax.

(3) Each county treasurer shall execute an electronic funds transfer agreement with the Treasurer of State to effectuate the contemporaneous transmittal of funds to the Treasurer of State and the redistribution as provided by law of the net revenues produced by the uniform rate of tax.

(4)(A)(i) The Treasurer of State shall process the necessary documentation to certify the amount to be receipted and redistributed to each county treasurer no more than six (6) times each month, with no interim distributions.

(ii) By January 31, 2012, and by January 31 of each year thereafter, each county treasurer shall provide an annual summary report of all proceeds generated from ad valorem tax and distributed by the county to a school district for the period beginning January 1 and ending on December 31 of the preceding calendar year to the:

(a) Treasurer of State;

(b) Department of Education; and

(c) Superintendent of the school district to which the proceeds from the uniform rate of tax are distributed by the county.

(iii) Failure to report the annual summary required under subdivision (b)(4)(A)(ii) of this section by the county treasurer by the January 31 deadline shall result in the withholding of all reappraisal funding provided under § 26-26-1907 until the county treasurer complies with subdivision (b)(4)(A)(ii) of this section.

(iv) Funds withheld under subdivision (b)(4)(A)(iii) of this section are forfeited as follows:

(a) Twenty percent (20%) of withheld reappraisal funds are forfeited every two (2) months of noncompliance; and

(b) After ten (10) months of noncompliance, the total amount of withheld reappraisal funds is forfeited.

(v) A county is not relieved of the requirement to reappraise property, and funding for reappraisal shall be by local taxing unit sources until the county complies with this subdivision (b)(4)(A).

(vi) The Department of Education shall notify the Assessment Coordination Department if a county treasurer violates subdivision (b)(4)(A)(ii) of this section and withholding of reappraisal funding under this subdivision (b)(4)(A) is authorized.

(B) Documentation received and certified on the first, second, third, or fourth Tuesday, or second or third Thursday of each month by the time deadlines established by the Treasurer of State shall be processed for execution of the electronic funds transfer of deposit and redistribution, as provided by law, of the net revenues produced by the uniform rate of tax on the following day.

(C) When a banking holiday occurs, the Treasurer of State shall notify the county treasurers of the revised deadline, which shall minimize delay in the receipt and redistribution, as provided by law, of the net revenues of the uniform rate of tax.

(5) Each county official involved in the process established by the Treasurer of State for receipt and redistribution of the net revenues of the uniform rate of tax shall take all actions and do all things necessary to ensure that the process established is carried out in an efficient and prudent manner.

(6)(A)(i) It is the intent of the General Assembly to have the collection and distribution of tax revenues modified as little as possible by the process under this section.

(ii) The General Assembly specifically acknowledges that under other law county treasurers distribute revenues monthly on a pro rata basis to the various taxing units with a reconciliation of actual revenues produced by each levy of each taxing unit in the county taking place only in the final settlement produced for each tax year.

(B) The process under this section is not intended to affect the monthly distribution or final settlement process except for the process set out in subdivision (b)(4) of this section.

(c) For each school year, each county treasurer shall remit the net revenues from the uniform rate of tax to each local school district from which the revenues were derived.

(d) As used in this section:

(1) "Millage rate" means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of § 14-14-904 for the tax year used in a calculation under this subchapter;

(2) "Net revenues" means the revenues generated from ad valorem taxes collected on behalf of a school district multiplied by the ratio derived from dividing the uniform rate of tax by the total millage rate of the school district; and

(3) "Revenues" means the proceeds generated from ad valorem taxes, including:

(A) Current calendar year collections of ad valorem taxes;

(B)(i) Delinquent ad valorem taxes paid to the county in the current calendar year.

(ii) Delinquent ad valorem taxes include the penalties and interest that are distributable to a school district under existing law;

(C) The actual amount of homestead tax credit paid to the county in the current calendar year;

(D) Excess commissions that will be distributed to a school district in the current calendar year;

(E) Interest earned in the current calendar year on any tax funds held in trust and distributed to a school district in the current calendar year;

(F) Ad valorem tax proceeds from land redemptions received by the county in the current calendar year; and

(G) A subtraction of all costs and commissions authorized by law relating to the collection of ad valorem taxes that the county deducts from distributions to a school district in the current calendar year.

History. Acts 1931, No. 169, § 130; Pope's Dig., § 11572; A.S.A. 1947, § 80-601; Acts 1997, No. 1300, § 6; 1999, No. 787, § 1; 2003 (2nd Ex. Sess.), No. 28, § 6; 2003 (2nd Ex. Sess.), No. 105, § 8; 2007, No. 343, § 1; 2009, No. 1397, § 6; 2011, No. 633, § 3.

Amendments. The 2009 amendment added (d).

The 2011 amendment added (b)(4)(A)(ii) through (vi).

CASE NOTES

Excess Funds.

Education commissioner, a department of education, and a state treasurer were not authorized to distribute excess funds to another school district under subdivision (b)(1)(B) of this section; the retention of revenue in excess of foundation funding resulted in variations, which were contemplated by Ark. Const. Art. 14, § 3(a). Moreover, the excess funds did not constitute an overpayment, such that the remedies in § 6-20-2306 could have been implemented. Kimbrell v. McCleskey, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

26-80-104. Collection and separation of proceeds.

CASE NOTES

State Tax Not Shown.

In a dispute over a twenty-five mill uniform rate of tax (URT), a trial court erred by finding that the URT revenues were state-tax revenues. School taxes were a breed of their own that were neither state or local; the URT was not converted into a state tax solely because the revenues were remitted to the Arkansas State Treasurer and then back to the school districts. Kimbrell v. McCleskey, 2012 Ark. 443, — S.W.3d —, 2012 Ark. LEXIS 472 (Nov. 29, 2012).

Subchapter 4 — Amendment 74 Enabling Act of 2003

26-80-404. Calculation of compliance with the uniform rate of tax.

(a) On or before October 1 of each year, the Department of Education, in conjunction with the Assessment Coordination Department, shall monitor each school district's compliance with the uniform rate of tax.

(b)(1) The Department of Education and the Assessment Coordination Department shall determine compliance with the uniform rate of tax by analyzing the millage rate levied for maintenance and operation millage from the most recent school election in a school district in which the ad valorem tax rate was voted upon.

(2) If the millage rate levied for maintenance and operation millage is equal to or greater than twenty-five (25) mills, then the school district is in compliance with the uniform rate of tax and Arkansas Constitution, Amendment 74.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2; 2009, No. 655, § 127.

Amendments. The 2009 amendment rewrote the section.

CHAPTER 81

MULTICOUNTY AIRPORT AND RIVERPORT FINANCING ACT

26-81-107. Record of collections — Deposit with the Treasurer of State.

(a) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this chapter and other subchapters authorizing county sales and use tax in each county and shall deposit all such revenues with the Treasurer of State.

(b)(1) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) of the funds as a charge by the state for its services as specified in this chapter and shall credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund.

(2) In addition, the Treasurer of State is authorized to retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(A) Make remittances to the county for rebates made by the county for taxes, if any, in excess of amounts specified by the particular county ordinances paid by a taxpayer;

(B) Make refunds for overpayment of the taxes; and

(C) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(c)(1) Except as set forth in subsection (d) and (e) of this section, all funds received by the Treasurer of State from the sales tax levied by each county after deducting the three percent (3%) for the Constitutional Officers Fund and the State Central Services Fund shall be deposited into the Local Sales and Use Tax Trust Fund and shall be credited to the account of the county in which collected.

(2)(A) The Treasurer of State shall transmit monthly to the county treasurer and to the municipal treasurer of each municipality located in a county levying the tax authorized in this chapter its per capita share of the moneys received by the Treasurer of State from the tax levied by the county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(B) The county treasurer of any county that has levied a sales and use tax pursuant to this chapter and that rebates taxes paid in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(d)(1) Except for revenue collected under subdivision (d)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

(e) Money collected that is derived from a tax on aviation fuel levied by a county that is not dedicated to a specific purpose and may legally be used for any lawful purpose shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the county and transmitted directly to the publicly owned airport where the aviation fuel was sold, subject to the charges by the state for its services as specified in this section.

History. Acts 1991, No. 738, § 10; 1997, No. 1176, § 18; 2003, No. 1273, §§ 73, 74; 2007, No. 166, §§ 7, 8; 2009, No. 840, §§ 9, 10.

Amendments. The 2009 amendment inserted "and (e)" in (c)(1); and added (e).

CHAPTER 82

LOCAL SALES AND USE TAX ECONOMIC DEVELOPMENT PROJECT FUNDING ACT

Effective Dates. Acts 2011, No. 828, § 11: Oct. 1, 2011.

26-82-101. Title.

This chapter shall be known as the "Local Sales and Use Tax Economic Development Project Funding Act".

History. Acts 2011, No. 828, § 1.

26-82-102. Definitions.

As used in this chapter:

(1) "Calendar quarter" means a three-month period that begins on January 1, April 1, July 1, or October 1;

(2) "City" means any city of the first class, city of the second class, or incorporated town of the state;

(3) "Develop" means to plan, design, construct, acquire by purchase, acquire by eminent domain, own, operate, rehabilitate, lease as lessor or lessee, enter into lease-purchase agreements with respect to, lend, make grants in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, whether real property, personal property, or mixed property;

(4) "Economic development project" means infrastructure, land, buildings, and other improvements on the land and all other machinery, apparatus, equipment, office facilities, and furnishings that are necessary, suitable, or useful by a sponsor that meets at least three (3) of the following criteria:

(A) The sponsor makes an investment of at least ten million dollars ($10,000,000) in the economic development project;

(B) The economic development project creates at least fifty (50) new jobs;

(C) The sponsor pays wages to new full-time permanent employees in excess of one hundred ten percent (110%) of the lesser of the state average wage or county average wage for the preceding calendar year;

(D) The economic development project is related to a targeted industry as identified in a local, regional, or state strategic plan for economic development;

(E) The economic development project has a benefit-to-cost ratio greater than two (2) as determined by the Arkansas Economic Development Commission;

(F) The economic development project receives at least a three-fourths (¾) vote of support from the city council or quorum court; or

(G) The sponsor signs a financial incentive agreement with the Arkansas Economic Development Commission;

(5) "Infrastructure" means:

(A) Land acquisition;

(B) Site preparation;

(C) Road and highway improvements;

(D) Rail spur construction;

(E) Water service;

(F) Wastewater treatment;

(G) Employee training, including without limitation equipment used for the training;

(H) Environmental mitigation;

(I) Training and research facilities and the necessary equipment for the training and research facilities; and

(J) Sponsor-owned electric equipment, including without limitation redundant transformers, redundant service lines, backup generation devices, substation equipment, and similar electric equipment that is owned by a sponsor;

(6)(A) "Investment" means money expended by a sponsor on project costs directly related to an economic development project.

(B) "Investment" does not include amounts expended in aid of an economic development project by the state or by a local entity;

(7) "Levying entity" means a city or a county levying a local sales and use tax under this chapter;

(8) "Local entity" means a nonprofit corporation, county, city, improvement district, or school district in the state or an agency or instrumentality of a nonprofit corporation, county, city, improvement district, or school district;

(9) "Local sales and use tax" means a tax levied under this chapter on the gross proceeds or gross receipts derived from sales within a city or county of all items that are subject to taxation under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(10) "New full-time permanent employee" means a position or job expected to be held by the employee or employees for at least twenty-six

(26) consecutive weeks with an average of at least thirty (30) hours of work per week;

(11) "New job" means a position for a new full-time permanent employee created at an economic development project;

(12)(A) "Project costs" means costs associated with the:

(i) Construction of a new plant or facility, including without limitation land, building, production equipment, or support infrastructure;

(ii) Expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project costs" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless:

(a) There is sufficient documentation that the existing business was closed; and

(b) The purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure; and

(13) "Sponsor" means a sole proprietor, partnership, corporation, limited liability company, or association taxable as a business entity, a nonprofit corporation, or a combination of these entities.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 17.

Amendments. The 2013 amendment inserted "economic development" in (4)(A).

26-82-103. Authority to levy tax.

(a)(1) The governing body of a city or county may adopt an ordinance levying a local sales and use tax in the amount of one-eighth of one percent (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), one percent (1%), or any combination of these amounts to pay project costs of an economic development project located within the levying entity or near the levying entity if still located within the state.

(2)(A) The ordinance may levy multiple local sales and use taxes.

(B) However, there shall not be in effect at any one (1) time local sales and use taxes levied under this chapter at an aggregate rate greater than one percent (1%).

(b) A certified copy of the ordinance authorizing the levy of a local sales and use tax shall be provided to the Director of the Department of Finance and Administration as soon as practicable after the adoption of the ordinance.

(c) The local entity shall:

(1) Determine the maximum amount of revenue to be generated by each local sales and use tax levied under this chapter; and

(2) State in the levying ordinance the maximum amount of revenue to be generated by each local sales and use tax levied under this chapter.

(d)(1) The local sales and use tax levied under this chapter shall expire when the maximum amount of revenue determined under subdivision (c)(1) of this section has been collected as determined under this subsection (d).

(2)(A) Except as otherwise provided in § 26-82-106, to provide for the accomplishment of the administrative duties of the director, the local sales and use tax shall terminate on the first day of the calendar quarter after the expiration of ninety (90) days from the date there is filed with the director a written statement signed by the chief executive officer of the city or county levying the local sales and use tax and identifying the local sales and use tax to be terminated.

(B) In the statement described in subdivision (d)(2)(A) of this section, the city or county levying the local sales and use tax shall certify that it has received the maximum amount of revenue stated in the levying ordinance.

(3) The chief executive officer of the city or county shall file the certification required under this subsection (d) not later than thirty (30) days after the receipt of the maximum amount of revenue stated in the levying ordinance.

(4) Upon the termination of a local sales and use tax under this subsection (d), any surplus tax collections that may have accumulated from the local sales and use tax shall be transferred to the general fund of the city or county.

History. Acts 2011, No. 828, § 1.

26-82-104. Election.

(a)(1) Within thirty (30) days following the adoption of an ordinance levying a local sales and use tax under this chapter, the levying entity by ordinance shall provide for the calling of a special election on the question of whether to levy the local sales and use tax under §§ 7-11-201 — 7-11-205.

(2) The date for the special election may be the same as the date for the next regular municipal election or county election.

(3) The governing body of the levying entity shall:

(A) Notify the county board of election commissioners that the question has been referred to the vote of the people; and

(B) Submit a copy of the ballot title to the county board of election commissioners.

(4) The election shall be conducted in the manner provided by law for all other municipal and county elections unless otherwise provided in this chapter.

(b)(1) Except as otherwise provided in this subsection, the ballot title to be used at the election shall be in substantially the following form:
"[ ] FOR adoption of a....percent (....%) local sales and use tax within.....(name of local entity) for economic development projects not to exceed $....(maximum amount of revenue to be generated) to be terminated on the first day of the calendar quarter following the expiration of ninety (90) days after.....(name of local entity) certifies it has received $....(maximum amount of revenue to be generated)."

"[ ] AGAINST adoption of a....percent (....%) local sales and use tax within.....(name of local entity) for economic development projects not to exceed $....(maximum amount of revenue to be generated) to be terminated on the first day of the calendar quarter following the expiration of ninety (90) days after.....(name of local entity) certifies it has received $....(maximum amount of revenue to be generated)."

(2)(A) The ordinance levying the local sales and use tax may contain an expiration date.

(B) If the ordinance contains an expiration date under subdivision (b)(2)(A) of this section, the ballot title shall include the expiration date for the levy of the tax.

(C) If the ordinance is adopted in the form described in this subsection, the local sales and use tax shall cease to be levied on the date stated on the ballot.

(D) The expiration date shall be the last day of a calendar quarter.

(E) An expiration date included under this subsection does not extend the effective period of the local sales and use tax beyond the expiration date provided under § 26-82-103.

(3)(A)(i) Except as provided in § 26-82-103, the governing body of the levying entity may refer to the voters a change in the expiration date for the local sales and use tax approved by the voters to extend the levy of the local sales and use tax beyond the expiration date previously approved.

(ii) The proposed expiration date shall be the last day of a calendar quarter.

(B) If the governing body of the levying entity refers to the voters a change in the expiration date for an existing local sales and use tax levied under this chapter, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the expiration date for a local sales and use tax levied under this chapter shall be conducted in the manner provided by law for all other municipal and county elections.

(ii) The results of the election under this subsection shall be certified, proclaimed, and subject to challenge under § 26-82-105.

(D)(i) To extend the local sales and use tax levied under this chapter to a new expiration date, the levying entity shall notify the

Director of the Department of Finance and Administration of the new expiration date approved by the voters:

(a) After publication of the proclamation has occurred; and

(b) At least ninety (90) days before the current expiration date of the local sales and use tax.

(ii) The local sales and use tax extended under this subdivision (b)(3) shall continue to be levied until the new expiration date.

(E)(i) If the voters do not approve a change in the expiration date for the local sales and use tax levied under this chapter, the local sales and use tax shall continue to be collected until the expiration date previously approved by the voters.

(ii) However, the expiration date shall not be extended beyond the expiration date provided under § 26-82-103.

(F) An election to change the expiration date for a local sales and use tax levied under this chapter is not an election on the levy of the sales and use tax.

History. Acts 2011, No. 828, § 1.

26-82-105. Requirements — Effective dates.

To provide time to prepare for an election required under this chapter and to provide time for the Director of the Department of Finance and Administration to accomplish his or her duties, the following requirements apply to an ordinance levying a local sales and use tax under this chapter:

(1)(A) The ordinance levying the local sales and use tax under this chapter is not effective until after the election under § 26-82-104 has been held.

(B)(i) Following the election, the mayor or the county judge of the levying entity shall issue his or her proclamation of the results of the election with reference to the local sales and use tax.

(ii) The proclamation described in subdivision (1)(B)(i) of this section shall be published one (1) time in a newspaper having general circulation within the levying entity.

(C) A person desiring to challenge the results of an election as published in the proclamation shall file the challenge in the circuit court of the county in which the levying entity is located within thirty (30) days of the date of publication of the proclamation;

(2) The local sales and use tax shall not go into effect until the governing body of the levying entity has adopted a written plan stating the following:

(A) A description of the economic development project to be financed by the revenues from the local sales and use tax;

(B) A description of the economic impact and the cost-benefit analysis of the proposed economic development project;

(C) An estimate of the amount of revenue from the local sales and use tax necessary to defray costs for the economic development project and a budget of the costs;

(D)(i) A certification by the mayor or county judge of the levying entity that each economic development project to benefit from the expenditure of the revenues from the local sales and use tax consists of an investment in the region that satisfies at least three (3) of the criteria in § 26-82-102(4).

(ii) The certification described in subdivision (2)(D)(i) of this section shall state with specificity which criteria under § 26-82-102(4) the economic development project satisfies; and

(E) A tentative time schedule stating the period of time during which the sum requested is to be expended;

(3)(A) As directed by the governing body of the levying entity and after the written plan has been approved by the governing body of the levying entity under subdivision (2) of this section, the mayor or county judge of the levying entity shall notify the director of the rate change:

(i) After publication of the proclamation has occurred; and

(ii)*(a)* Ninety (90) days before the effective date of the local sales and use tax.

(b) The effective date of the local sales and use tax shall be the first day of a calendar quarter.

(B) The ordinance shall become effective no earlier than the first day of the calendar quarter after the:

(i) Director gives to sellers a minimum notice period of sixty (60) days; and

(ii) Expiration of the full thirty-day period of challenge under subdivision (1) of this section.

(C) The rate change on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog is effective on the first day of a calendar quarter after a minimum of one hundred twenty (120) days' notice by the director to the sellers; and

(4) If an election contest occurs under subdivision (1) of this section, the local sales and use tax shall be collected under this chapter unless enjoined by a court order.

History. Acts 2011, No. 828, § 1.

26-82-106. Abolition of tax.

(a)(1) Except under subsection (b) of this section, the levying entity may abolish all or a portion of the local sales and use tax authorized under this chapter by:

(A) A roll call vote of two-thirds (⅔) of all members elected to the governing body of the levying entity, excluding the mayor and county judge, if the governing body of the levying entity has determined that the purposes of the local sales and use tax cannot be fulfilled or cannot continue to be fulfilled; or

(B) An election called by:

(i) Action of the governing body of the levying entity; or

(ii) A petition of the qualified voters in the levying entity.

(2) A petition of the qualified voters and the calling and holding of an election concerning the abolition of the local sales and use tax under this subsection are governed by the initiative procedures in Arkansas Constitution, Article 5, § 1, and any ordinances of the levying entity governing initiative procedures.

(3) The governing body of the levying entity may call for an election under this subsection subject to the same procedures stated in this chapter for the calling of the initial election.

(4)(A) The ballot title for use in an election under this subsection shall be in substantially the following form:

"[ ] FOR abolition of the....percent (....%) local sales and use tax within.....(name of local entity) for economic development projects."

"[ ] AGAINST abolition of the....percent (....%) local sales and use tax within.....(name of local entity) for economic development projects."

(B) However, a ballot title that contains a question for qualified voters on whether to continue the levy of a local sales and use tax complies with this subdivision (a)(4).

(b)(1) In a levying entity in which a local sales and use tax has been adopted under this chapter and all or a portion is pledged to secure the payment of bonds, the portion of the local sales and use tax pledged to the payment of bonds shall not be repealed, abolished, or reduced while the bonds are outstanding.

(2) The bonds are not outstanding to the extent that sufficient tax revenues have been set aside to pay the bonds when due.

(c) The effective date of an affirmative vote of the qualified voters to abolish the local sales and use tax under subsection (a) of this section shall be the first day of the calendar quarter after the expiration of ninety (90) days from the date of publication of the election proclamation.

(d)(1) The effective date of an affirmative vote by the governing body of the levying entity to abolish the local sales and use tax under subsection (a) of this section shall be on the first day of the calendar quarter after the expiration of ninety (90) days from the date a written statement signed by the mayor or county judge of the levying entity abolishing the tax is filed with the Director of the Department of Finance and Administration certifying that the governing body of the levying entity has adopted an ordinance abolishing the local sales and use tax.

(2) A copy of the ordinance abolishing the local sales and use tax shall be attached to the certificate.

History. Acts 2011, No. 828, § 1.

26-82-107. Notice of adoption or abolition of tax.

No later than ten (10) days following each of the events stated in the ordinance with reference to the procedure for the adoption or abolition of the local sales and use tax and the effective dates of the action under this chapter, the clerk of the levying entity shall notify the Director of the Department of Finance and Administration of the event.

History. Acts 2011, No. 828, § 1.

26-82-108. Collection of tax.

(a)(1)(A) In each levying entity in which a local sales and use tax has been levied under this chapter, each seller shall add the tax imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the tax imposed under this chapter to the sale price of the product or service, and when added, the combined tax shall:

(i) Constitute a part of the price;

(ii) Be a debt of the purchaser to the seller until paid; and

(iii) Be recoverable at law in the same manner as the purchase price.

(B) When the sale price in the levying entity involves a fraction of a dollar, the two (2) combined taxes shall be added to the sale price.

(C) A seller is entitled to the same discount with respect to tax remitted under this chapter as is authorized for the collection and remission of gross receipts taxes to the state under § 26-52-503.

(2) If the General Assembly or the electors of the state increase or decrease the rate of the state gross receipts tax, the combined rate of the state gross receipts tax and the sales and use tax by the levying entity shall be the sum of the two (2) rates.

(b) The local sales and use tax levied under this chapter on new and used motor vehicles shall be collected by the Director of the Department of Finance and Administration directly from the purchaser under § 26-52-510.

History. Acts 2011, No. 828, § 1.

26-82-109. Administration of tax.

(a) On and after the effective date of a local sales and use tax imposed under this chapter, the Director of the Department of Finance and Administration shall perform all functions incidental to the administration, collection, enforcement, and operation of the local sales and use tax.

(b) In addition to the state gross receipts tax and compensating tax, the director shall collect the additional tax under this chapter on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, distribution, or other consumption of all taxable items and services subject to the Arkansas Gross Receipts Act

of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) The local sales and use tax imposed under this chapter and the tax imposed under the gross receipts tax and compensating tax shall be collected together and reported upon the forms and under the administrative rules that are prescribed by the director and that are not inconsistent with this chapter.

(2) Each vendor who is liable for one (1) or more sales or use taxes levied under this chapter, the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., shall report a combined city and county sales tax and a combined city and county use tax on his or her sales and use tax report.

(3) The combined city sales tax or county sales tax is equal to the sum of all sales taxes levied by a city or county under this chapter and the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(4) The combined city or county use tax is equal to the sum of all use taxes levied by a city or county under this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(5) This subsection applies only to a tax collected by the director.

(d) On and after the effective date of an ordinance to abolish a local sales and use tax in any levying entity, the director shall comply with the ordinance under this chapter.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 18.

Amendments. The 2013 amendment inserted "local sales and use" in (a).

26-82-110. Applicability of tax.

(a) A local sales and use tax levied under this chapter applies to sales of items and services sold by a business and shall be administered under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) When a direct pay permit holder purchases tangible personal property or taxable services either from an Arkansas vendor or an out-of-state vendor for use, storage, consumption, or distribution in Arkansas, the permit holder shall accrue and remit the local sales and use tax, if any, under the sourcing rules in §§ 26-52-521 and 26-52-522.

History. Acts 2011, No. 828, § 1.

26-82-111. Disposition of funds.

(a)(1)(A) The Treasurer of State shall transmit to the treasurer or financial officer of each levying entity the levying entity's share of local sales and use taxes collected under this chapter.

(B) Transmittals required under this chapter shall be made at least monthly in each state fiscal year.

(C) Funds transmitted under this chapter may be used by the levying entity for any purpose authorized under this chapter.

(2) Before transmitting the funds, the Treasurer of State shall deduct three percent (3%) of the sum collected from each levying entity during the period as a charge by the state for its services specified in this chapter, and the amount deducted shall be deposited by the Treasurer of State to the credit of the account of the Constitutional Officers Fund and the State Central Services Fund.

(b)(1)(A) The Treasurer of State may retain in the suspense account of any levying entity a portion of the levying entity's share of the local sales and use tax collected under this chapter.

(B) A balance retained in the suspense account shall not exceed five percent (5%) of the amount remitted to the levying entity.

(2) The Treasurer of State may make refunds from the suspense account of any levying entity:

(A) For overpayments made to the account after the refunds have been approved by the Director of the Department of Finance and Administration; and

(B) To redeem dishonored checks and drafts deposited to the credit of the suspense account of the levying entity.

(c)(1) When any city or county adopts a local sales and use tax and then abolishes the tax, the Treasurer of State shall retain in the suspense account of the levying entity for a period of one (1) year five percent (5%) of the final remittance to the levying entity at the time of termination of collection of the tax within the levying entity to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of the account.

(2)(A) After one (1) year has elapsed after the effective date of abolishment of the local sales and use tax, the Treasurer of State shall:

(i) Remit the balance of the account to the levying entity; and

(ii) Close the account.

(B) A refund shall not be allowed after the one-year period under subdivision (c)(2)(A) of this section has lapsed and the account is closed.

History. Acts 2011, No. 828, § 1.

26-82-112. Enforcement and penalties.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing a local sales and use tax imposed under this chapter shall be the same as for the state gross receipts tax and compensating tax unless otherwise provided in this chapter.

(b)(1) When property is seized by the director under any statute authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in payment of any local sales and use tax imposed under this chapter, the

director shall sell sufficient property to pay the delinquent local sales and use taxes and penalties due to any levying entity under this chapter in addition to the amount required to pay any taxes due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds of a sale under subdivision (b)(1) of this section shall be applied first to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the levying entity.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 19.

Amendments. The 2013 amendment inserted "local sales and use" twice in (b)(1).

26-82-113. Trust funds — Administration.

(a)(1)(A) Money reported as local sales and use taxes that was collected in local taxing jurisdictions that is not immediately identifiable and money collected in local jurisdictions that do not have a local sales and use tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(B) When a local tax jurisdiction is identified for money that has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(C) If the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars ($50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars ($50,000) to general revenues.

(2)(A)(i) Money reported as local sales and use taxes that was collected by an out-of-state vendor and that is not identifiable shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) Any funds deposited under subdivision (a)(2)(A) of this section shall not be included for computation of transfer to general revenue in subdivision (a)(1) of this section.

(B) The Treasurer of State shall distribute unidentified local sales and use taxes collected by out-of-state vendors to the county treasurers and city treasurers as determined by their proportionate share of distribution from the Local Sales and Use Tax Trust Fund on a monthly basis.

(b)(1) The Treasurer of State shall review the flow of moneys through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys that may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2)(A) After making an estimate under subdivision (b)(1) of this section, the Treasurer of State shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the state.

(B) All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall transmit monthly to the county treasurers and city treasurers their proportionate share of the interest derived from the investment of the Local Sales and Use Tax Trust Fund under this subsection.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 20.

Amendments. The 2013 amendment substituted "do not have a local sales and use" for "have no" in (a)(1)(A).

26-82-114. Effect of change in city boundaries.

If a city in which a local sales and use tax has been imposed under this chapter changes or alters its boundaries, a tax imposed under this chapter shall be effective in the added territory or abolished in the detached territory on the first day of the first calendar month following the expiration of thirty (30) days from the date that the annexation or detachment becomes effective.

History. Acts 2011, No. 828, § 1.

26-82-115. Maximum tax limitation.

(a) A sales and use tax levied under this chapter shall be levied and collected only on the first two thousand five hundred dollars ($2,500) of gross receipts, gross proceeds, or sales price on the sale of:

(1) Motor vehicles;

(2) Aircraft;

(3) Watercraft;

(4) Modular homes;

(5) Manufactured homes; or

(6) Mobile homes.

(b)(1)(A) For a taxpayer not subject to the levy of a use tax on taxable services or tangible personal property brought into the state for storage until the tangible personal property is subsequently initially used in the state, the use tax portion of the local sales and use tax authorized under this chapter shall be computed on each purchase of the tangible personal property by the taxpayer as if all the tangible personal property was subject upon purchase to the use tax portion of the local sales and use tax.

(B) However, the use tax portion of the local sales and use tax authorized under this chapter shall be computed only on the first two thousand five hundred dollars ($2,500) of gross receipts, gross proceeds, or sales price on the sale of:

(i) Motor vehicles;

(ii) Aircraft;

(iii) Watercraft;

(iv) Modular homes;

(v) Manufactured homes; or

(vi) Mobile homes.

(2) The use tax portion of the local sales and use tax computed under subdivision (b)(1) of this section shall be aggregated on a monthly basis, and the aggregate monthly amount shall be divided by the sum of the total purchases of the tangible personal property on which the use tax portion of the local sales and use tax is computed, and the quotient shall be multiplied by the amount of the taxpayer's tangible personal property subsequently initially used and subject to levy of the use tax portion of the local sales and use tax within the city or county during the month for which the monthly aggregate tax figure was computed, and the product shall be the amount of the use tax portion of the local sales and use tax liability for the taxpayer for the month computed.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, §§ 21, 22.

Amendments. The 2013 amendment, in (b)(1)(A), inserted "tangible personal" three times and "portion of the local sales and use tax" at the end; and, in (b)(2), substituted "use tax portion of the local sales and use tax" for "taxes," inserted "portion of the local sales and use tax" twice, "tangible personal" twice, and "of this section."

26-82-116. Reporting.

Vendors collecting, reporting, and remitting a local sales and use tax levied under this chapter shall collect, report, and pay the local sales and use tax in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other local sales and use taxes.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 23.

Amendments. The 2013 amendment inserted "a local" following "and remitting," "local" following "and pay the," and substituted "tax" for "taxes" twice throughout the section.

26-82-117. Capital improvement bonds.

(a) All or a specific portion of the local sales and use tax under this chapter may be pledged to bonds issued under §§ 14-164-301 — 14-164-340.

(b) If pledged under the Local Government Bond Act of 1985, § 14-164-301 et seq., §§ 14-164-337 and 14-164-339 apply to the disposition of the revenues from local sales and use tax so pledged.

(c) The local sales and use tax may not be repealed, abolished, or reduced while any bonds secured by a pledge of the local sales and use tax are outstanding.

History. Acts 2011, No. 828, § 1.

26-82-118. No effect on existing taxes.

The imposition of a local sales and use tax under this chapter does not affect any existing local sales and use taxes levied by a city or county for economic development purposes.

History. Acts 2011, No. 828, § 1.

26-82-119. Rules.

The Director of the Department of Finance and Administration may promulgate reasonable rules to implement the enforcement, administration, and collection of a local sales and use tax authorized in this chapter.

History. Acts 2011, No. 828, § 1; 2013, No. 1135, § 24.

Amendments. The 2013 amendment substituted "a local sales and use tax" for "the taxes."